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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 9th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 10 August 1999, at 10 a.m.

Chairman: Mr. HATANO

later: Mr. BOSSUYT
(Vice-Chairman)

later: Mr. HATANO
(Chairman)

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The meeting was called to order at 10 a.m.

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION:

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

(b) XENOPHOBIA

(agenda item 3) (E/CN.4/Sub.2/1999/5, 6, 7 and Add.1, 8 and 40; E/CN.4/Sub.2/1999/NGO/3, 4 and 12; E/CN.4/1999/12, 15 and Add.1, and 16 and Corr.1 and 2; E/CN.4/1999/L.11/Add.6)

1. Mr. WEISSBRODT, introducing his working paper on the rights of non-citizens prepared in accordance with Sub-Commission decision 1998/103 (E/CN.4/Sub.2/1999/7), said that he had explored the rights of non-citizens under the relevant international standards, particularly the International Convention on the Elimination of All Forms of Racial Discrimination, and had examined the development of such rights since the 1985 Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live. He had also presented some tentative conclusions and recommendations. The working paper had been prepared in response to the needs of the Committee on the Elimination of Racial Discrimination (CERD) and also addressed some additional issues raised by members of the Sub-Commission.

2. CERD had drawn attention to the growing tendency to make distinctions between different categories of non-citizens, which in some cases deprived people of fundamental rights and had racist implications. Thus the European Union made distinctions between foreign nationals of member and non-member States of the Union. In Italy, for example, foreign workers from Union countries received more substantial social security benefits than their counterparts from non-member countries. He shared CERD's concerns and advocated the development of a standard to ensure that distinctions between different categories of non-citizens had a legitimate basis and did not constitute discrimination.

3. The ground-breaking study entitled International Provisions Protecting the Human Rights of Non-Citizens, prepared by Baroness Elles for the Sub-Commission in 1977, had been superseded to some extent by recent developments including the jurisprudence of the Human Rights Committee and CERD. In its General Comment 15, adopted in 1986, the Human Rights Committee had expressed concern that, in some cases, States parties to the International Covenant on Civil and Political Rights had failed to implement its provisions without discrimination in respect of aliens. It had also drawn attention to the responsibility of States parties to make known the Covenant's provisions to aliens within their jurisdiction.

4. The Committee's forthcoming General Comment on article 12 of the Covenant concerning freedom of movement was also likely to be of relevance to the rights of non-citizens. The development of a consistent approach by the relevant United Nations human rights treaty bodies to the issue of non-citizens' rights presented a major challenge.

5. He had dealt with issues relating to migrants in an addendum to his working paper (E/CN.4/Sub.2/1999/7/Add.1) with particular reference to the impediments to ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

6. He suggested that the Sub-Commission should cooperate closely with CERD in examining the issue and preparing a comprehensive study on the rights of non-citizens. CERD might, perhaps, be persuaded to withdraw its somewhat outdated General Recommendation XI on non-citizens and prepare a new general recommendation in narrative form that took account of later developments in the field.

7. Mr. OLOKA ONYANGO, introducing his working paper on globalization in the context of increased incidents of racism, racial discrimination and xenophobia (E/CN.4/Sub.2/1999/8), said he had not been surprised to hear the High Commissioner for Human Rights highlight the theme of globalization in her opening statement to the Sub-Commission. The issue had received unprecedented coverage in 1999 as the theme of the annual British Broadcasting Corporation (BBC) Reith lectures, the Human Development Report of the United Nations Development Programme (UNDP) and numerous conferences, lectures and seminars. It was extremely important for the Sub-Commission to come to grips with a phenomenon that was destined to be the key social, political, economic and cultural issue of the next millennium.

8. Three distinct stages of globalization were discernible in recent history: colonial imperialism entailing foreign capital movements; internationalization through the adoption of human rights instruments, and late capitalism involving the multilateralization of capital and the institutions controlling such capital.

9. As for the second dimension of his study, he stressed the importance of coming to grips with the most recent manifestations of racism, racial discrimination and xenophobia. Racism was a structural phenomenon that could not be addressed as a series of fortuitous incidents or a freak failing of human nature. The new directions of institutionalized racism would have to be addressed through a critical examination of its most recent manifestations.

10. Although studies of globalization were proliferating, few had made the connection with racism. He hoped that his own study would assist in identifying the points of linkage between the two phenomena and in designing a framework for comprehensively appreciating the diverse aspects of the latest developments in the global economic order.

11. Mr. BOSSUYT said that, having been unable to attend the previous session of the Commission, he had not had the opportunity to introduce his working paper on the concept of affirmative action (E/CN.4/Sub.2/1998/5), which outlined the relevant international provisions and reviewed developments in the case law of the United States Supreme Court and the European Court of Justice. In the meantime, however, the Economic and Social Council had endorsed the proposal by the Sub-Commission and the Commission on Human Rights that he should be appointed as Special Rapporteur on the subject.

12. Affirmative action could take the form of constitutional, legislative, regulatory or administrative measures designed to assist certain categories of disadvantaged individuals who had suffered systematic discrimination in the past. The term "positive discrimination" should not be used to designate such measures, since the word "discrimination" was a pejorative term applied to arbitrary, unlawful or unjustifiable distinctions. Measures adopted for a laudable purpose did not necessarily justify disparity of treatment. It would be unfair, for example, to provide social assistance to persons who did not need it but belonged to a category that had previously been disadvantaged, and to withhold it from persons who needed it but belonged to a formerly privileged category.

13. Public authorities must therefore select affirmative-action measures in such a way as to assist certain categories without depriving others. An individual must not be deprived of a right on the grounds that such deprivation could compensate disadvantaged groups for previous discrimination. Affirmative action was not an exception to the principle of non-discrimination. Indeed, the principle of non-discrimination imposed limits on affirmative action, which must not lead to disparity of treatment in terms of rights or freedoms for reasons unrelated to those rights or freedoms.

14. In its resolution 1998/5, the Sub-Commission had approved his suggestion that the High Commissioner for Human Rights should be requested to send out a questionnaire to Governments, international organizations and non-governmental organizations (NGOs), inviting them to provide all relevant documentation on affirmative action. He had proposed that the questionnaire should inter alia cover: relations between non-discrimination and affirmative action; temporal, goal-related and other limits on positive action; and differences in affirmative action based on criteria, such as race, sex and language, that could serve to identify beneficiary groups. Measures should be classified as constitutional, legislative, regulatory or administrative and the relevant case law, particularly that emanating from the highest domestic courts, should be quoted. He urged the Sub-Commission to adopt a decision mentioning that it had authorized a questionnaire.

15. Mr. PINHEIRO said he regretted that he had been unable, owing to circumstances beyond his control, to prepare a working paper on proposals for the work of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. He would comment briefly on the subject instead.

16. The World Conference offered a unique opportunity for the United Nations, Governments and NGOs to forge a world strategy against racism in the twenty-first century. The Sub-Commission must put forward imaginative proposals designed to mobilize world public opinion, drawing on its wide-ranging experience in the struggle against racism and the many studies it had undertaken since the first World Conference to Combat Racism and Racial Discrimination in 1978.

17. The Sub-Commission had recognized the need to combine legislation against racial discrimination with educational and cultural initiatives and public awareness campaigns. It had further noted that racism and racial discrimination often resulted from the inequitable distribution of political

and economic power within societies. A 1989 study by Mr. Eide had focused on discrimination in specific contexts: indigenous peoples, slavery, migrant workers, aliens and ethnic groups. In 1993, the same expert had reported on ways and means of facilitating the peaceful and constructive solution of problems involving minorities. In 1998, a joint Sub-Commission/CERD paper had dealt with action against racism through teaching, education and culture and made recommendations concerning curricula at all levels of education.

18. At the Commission's current session, working papers had been submitted by Mr. Weissbrodt on the rights of non-citizens and by Mr. O[illegible]-Onyango on globalization in the context of the increased incidences of racism, racial discrimination and xenophobia. Mr. Bossuyt's study of affirmative action would also no doubt form the basis of a proposal for the World Conference.

19. In its proposals for the World Conference the Sub-Commission should highlight: the explosion of ethnic conflicts in the last decade of the century; the spread of xenophobia, particularly in Europe; double discrimination such as with respect to race and gender, race and sexual orientation, race and disability, race and age; the need for a thorough and transparent analysis of racism, discrimination and exclusion in multiracial societies; and ethnic divisions in countries that had experienced armed conflicts.

20. He proposed that a working paper be prepared on proposals for the forthcoming World Conference based on all the Sub-Commission's studies since the Second World Conference to Combat Racism and Racial Discrimination in 1983. It would seek to find a common denominator among the studies compatible with the six main objectives of the Conference, namely, reviewing the progress made in the fight against racism; considering ways and means of ensuring the application of existing standards; increasing awareness; formulating recommendations on ways to increase the effectiveness of United Nations activities and mechanisms; reviewing the various factors leading to racism; and formulating specific recommendations to further new national, regional and international measures to combat all forms of racism. A preliminary version of the working paper could be prepared for the meeting of the Preparatory Committee for the World Conference to be held in May 2000.

21. Ms. BAGUIROVA (Azerbaijan Women and Development Centre) drew attention to the 1 million Azerbaijani refugees from Armenia and Armenian-occupied Azerbaijani territories whose plight had remained unresolved by the international community for the past 11 years. The example of Kosovo showed that it was possible for human beings to unite and take effective action in response to threats of genocide and mass violations of human rights. That intervention was an example to the United Nations of how united action could be effective in extreme situations. NGOs had a prominent role to play in that regard.

22. Close attention should also be devoted to the education of the rising generation. Almost all existing education systems gave overt or covert prominence to one dominant culture, thereby instilling feelings of superiority or inferiority. Yet there could be no "greater" and "lesser" cultures. Civilization must be based on the harmonious coexistence of individuals in a

climate of mutual respect - values that, in a world racked by nationalism, xenophobia and racial discrimination, must be inculcated through education.

23. Her organization thus proposed the convening of an international conference on education, to review the whole history of the world's cultures and peoples, highlighting the unity of the civilization that underlay the diversity of those peoples and cultures; and the establishment of a scientific institute for the study of languages, to conduct research aimed at determining the common ancestry of all languages. Such an initiative would help bring about a change in attitudes, thereby promoting solutions to social, political and other world problems.

24. Ms. BIRD (International Confederation of Free Trade Unions) said that attempts by national Governments to reduce immigration, often using migrant workers as scapegoats in difficult economic situations, were short-sighted, as such workers brought great economic benefits to the receiving countries. Though contending with low pay, unbearable working conditions and exploitation, migrant workers were often escaping from even greater misery in their home countries. Such was the case of migrant workers in Thailand and Venezuela, fleeing manhunts, paramilitary killings and death threats in Myanmar and Colombia respectively.

25. While legal instruments existed to protect migrant workers, they were rarely enforced. That was why, her organization, representing 124 million workers worldwide, was participating in several international campaigns to protect, organize and empower the migrant workers themselves. In the context of the steering committee promoting ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, it applauded the ratification of that Convention by Senegal, bringing the number of ratifications to 12.

26. It had also been instrumental in the decision, taken by the International Labour Conference in June 1999, to start a new campaign for the ratification of ILO Conventions Nos. 97 and 143 on migrant workers' rights. It welcomed the decision by the Commission on Human Rights to appoint a Special Rapporteur on the human rights of migrants. It believed, however, that it would be premature for the Sub-Commission to remove the topic from its agenda, as proposed by Mr. Weissbrodt in paragraph 22 of the addendum to his working paper (E/CN.4/Sub.2/1999/7/Add.1).

27. The labour movement also supported national legislation to protect victims of trafficking, such as the Wellstone-Slaughter bill currently before the United States Senate. Above all, however, her organization was campaigning for the recognition of migrant workers as fully-fledged workers with fully-fledged rights: the battle for recognition of the core labour standards was one that needed especially to be fought on behalf of such workers.

28. Ms. AMALIA (Netherlands Organization for International Development Cooperation) said that the Indonesian Government's policy of sending large numbers of migrant workers abroad had benefited it enormously because of the foreign exchange earned by those workers. However, the Government had failed to reciprocate by providing adequate protection for those workers and their

families. Migrant workers and their families also suffered discrimination within Indonesia. Her organization thus urged the Sub-Commission to exert pressure on the Indonesian Government to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and to take full responsibility for all cases abroad involving Indonesian migrant workers and their families.

29. Mr. Bossuyt, Vice-Chairman, took the Chair.

30. Ms. TANAKA (International Movement Against All Forms of Discrimination and Racism) said that, in the neo-liberal global economy, welfare States had turned into welcome States, whose major concern was to attract foreign capital and foreign aid. In such a climate, vulnerable groups, with no State protection against exploitation by unscrupulous global economic actors, were increasingly doomed to extreme poverty. The gap between the rich engaged in the process of global competition and the poor excluded from it was widening. Indigenous peoples and other rural minorities had seen their land confiscated by agribusiness, mining interests and the like, with the active support of the host States.

31. The land-rights issue was a direct consequence of discrimination against indigenous and rural minorities by the global economy and its end result was mass migration to the industrialized regions. The recipient countries responded with economic exploitation of cheap labour, and also with racism and rejection on the part of civil society fearful for its job security. Globalization was accompanied by an expansion of transnational organized crime, the State response to which often had a more adverse effect on the victims than on the criminal organizations themselves. The linkage between globalization, extreme poverty and migration flows merited further study.

32. Her organization particularly welcomed Mr. Weissbrodt's discussion of trafficking in women and children. Further study on that topic should take account of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and of the draft Protocol against the Smuggling of Migrants by Land, Air and Sea, both supplementary to the United Nations Convention against Transnational Organized Crime. Lastly, the new, expanded concept of citizenship applied within the European Union and the North American Free Trade Agreement (NAFTA) countries should also be examined in depth.

33. Mr. HOFFMAN (Aboriginal and Torres Strait Islander Commission) said that the indigenous peoples of Australia shared the widespread frustration that efforts to combat racism were not working. Recent Australian legislation had been found by CERD to be racially discriminatory. As a nation-State, Australia had not yet faced up to the consequences of its colonial past. There had been no process of decolonization because there was insufficient will on the part of the majority population to address the major imbalances in Australia's social structure. Successive attempts at reconciliation had been a failure, because the Government had failed to cross the barriers erected between peoples by colonialism and had chosen instead to deny colonial history.

34. By the time the Government had been forced into establishing the Royal Commission into Aboriginal Deaths in Custody, 99 Aboriginal and Torres Strait Islander people had died in prison or police custody in less than 10 years. Despite the 339 recommendations contained in the final report of the Royal Commission, no criminal charges had been brought against any officials in connection with those deaths. Indigenous peoples comprised 2.5 per cent of Australia's total population, yet one-third of all adult male prisoners, two-thirds of adult female prisoners and two-thirds of the juveniles in detention were indigenous people.

35. A report by Australia's Human Rights and Equal Opportunity Commission entitled "Bringing Them Home" revealed a tragic history of Government policies aimed at separating indigenous children from their parents and communities. The Government had steadfastly refused to acknowledge that report or to implement its recommendation. The Prime Minister had achieved international notoriety for his refusal to apologize to the many thousands of indigenous people whose lives had been adversely affected.

36. Yet the Government continued to preach to its neighbours about democracy, public accountability and the strength of its institutions. The elimination of racism, however, required more than rhetoric. It required the Government to take the side of the victim, not the culprit. It required openness, honesty and courage. It was absolutely unacceptable that Australia's indigenous peoples should continue to endure the racism of which they had been the victims throughout two centuries of colonial government.

37. The indigenous peoples of Australia urged the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to accept the invitation of the Government to visit Australia. They also strongly urged the Government to promote, organize and participate in a regional conference leading up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Lastly, his organization recommended that the Commission on Human Rights should include the elimination of racial discrimination against indigenous peoples as a theme for the World Conference. The inclusion of such a theme would require a commitment by States to acknowledge past and continuing injustices against indigenous peoples; recognition of the ownership by indigenous peoples of their lands; and restoration of their autonomy, their identity and the resources needed for their survival as viable peoples.

38. Mr. KIRKYACHARIAN (Movement against Racism and for Friendship Among Peoples) said he hoped that there would be an in-depth discussion of the relations between globalization and the atomization it produced in terms of the increasing mutual exclusion of individuals and groups. The World Conference against Racism should deal with all the issues on the Sub-Commission's agenda, but particularly those concerning migrant workers, ethno-nationalism and racist attitudes to Gypsies and travelling people.

39. One certain effect of globalization was the development of xenophobia with regard to migrants and their families, and it was shocking to see democratic States hesitating to sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. His organization once again requested the Sub-Commission to draw up

a very firm recommendation on behalf of that instrument. It was indisputable that discriminatory practices must be combated by means of the appropriate legal and practical instruments: the European Union, with the particular support of the trade unions, was currently making efforts along those lines.

40. Ms. BIRO (Minority Rights Group) spoke of the clear role and obligation of State agencies such as the police and immigration officers under the various international instruments relating to the elimination of racial discrimination. The inquiry into the death in London of a black teenager had concluded that the investigation of that racist murder had been marred by a combination of professional incompetence, institutional racism and a failure of leadership by senior police officers. The inquiry report had stated that although institutional racism affected the Metropolitan Police Service and police services elsewhere, that finding should not lead to complacency in other institutions and organizations, for collective failure was apparent in many of them, including the criminal justice system.

41. The inquiry report had produced a racist backlash from some quarters and a number of NGOs, including her own organization, had received anonymous threats. Her organization recommended that the United Nations should take adequate steps to ensure the full and effective dissemination of all international standards to all communities, with programmes involving the media where possible; to ensure the effective participation of minorities in its mechanisms, including the Working Group on Minorities and the World Conference against Racism; to encourage multiculturalism and intercultural cooperation in all development programmes, including training programmes for the police; and to ensure that minorities were able to participate effectively without discrimination in the economic, social, cultural and political life of their countries.

42. Mr. Hatano resumed the Chair.

43. Ms. OLIVER (European Union of Public Relations) said that little would be achieved unless a concrete plan of action was adopted to persuade nation States to implement educational programmes and institute policies that punished overt racial discrimination. Intolerance was rapidly emerging as the most sinister ideology that the twentieth century would bequeath to the future. The main victims of the policies and ethos of racial and religious discrimination were multi-ethnic and multi-religious societies: there was a spreading virus of demands from non-viable groups for the creation of fragmented States so that each group could create its own homeland. The blame lay with those who, for selfish interests encouraged fissiparous tendencies in nation States. Xenophobia revelled in an environment of weak democracy, and human rights activists needed to formulate an action plan designed to investigate constitutional and legal structures and educational environments in different States because, where discrimination was sanctioned by the State and education created darkness rather than enlightenment, the States concerned needed to be ostracized.

44. Mr. WAREHAM (International Association Against Torture) said that globalization was the new euphemism for "imperialism", the penetration of finance capital into all areas of the world with the objective of securing maximum profits for that same small group of countries that, in the past, had

financed their development with profits from the slave trade. Once that fact was acknowledged, it was easy to understand the rabid and seemingly irrational resistance to the World Conference against Racism which, by exposing the true roots of racism, its beneficiaries and the reasons it stubbornly persisted risked upsetting the globalized economic apple-cart. The World Conference had thus to be killed gently by negligence, insufficient funding, bureaucratic procrastination and lack of publicity.

45. Globalization as imperialism needed to be further analysed and the Sub-Commission should carry out a study on the relationship between the transatlantic slave trade and the birth of the ideology of racism; such a study would establish the theoretical basis for the compensation due both to the descendants of the victims and to the countries from which they had been stolen.

46. The Sub-Commission should also see how private actors such as the transnational corporations and multilateral institutions could be made accountable to human rights mechanisms, for national policies were often carried out under the cover of transnational corporations over which sovereign States asserted they had no control. The first step towards developing human rights mechanisms and demanding that the transnational corporations comply with them was the universal ratification by all States of all existing human rights instruments.

47. Mr. Oloka-Onyango's working paper (E/CN.4/Sub.2/1999/8) identified the important and extremely sensitive area of racism within global civil society. The dominant players within the NGO community all came from the same elite group of countries. It was always the same group of well-financed NGOs from the developed world that handpicked and subsidized "safe" people to represent the developing world at the international level. Global civil society had raised no audible objection to clearly racist decisions regarding assistance, such as its diversion and the diversion of United Nations personnel from Africa to the Kosovo relief effort.

48. In preparing for the World Conference, the venue of which should be Brazil, the Sub-Commission should include plans to utilize fully the offices of the Special Rapporteur on contemporary forms of racism, racial discrimination xenophobia and related intolerance and to ensure adequate funding for him to carry out his mandate. It should also add its voice to those insisting that the United States of America hold a national preparatory meeting for the World Conference. The situation of Africans in the Americas, especially the United States of America, should once again be included in the agenda of the Working Group on Minorities with a view to producing a paper for presentation to the World Conference; if that were not possible, a working group should be established on the conditions of Africans in the Americas.

49. Ms. PARKER (Minnesota Advocates for Human Rights) described the activities of her organization's Building Immigrant Awareness and Support project, which had been set up in 1994 as an educational and outreach campaign to address anti-immigrant sentiment. The project worked in communities and schools through workshops, written and video curriculum materials, and technical assistance to provide accurate information on immigrant and refugee issues, informing immigrants about the communities and the communities about

immigrants. Her organization would be pleased to share information on the project's methods and to receive any suggestions for improvements; it was one approach to building long-term constructive relationships in a community and preventing racism from gaining a foothold.

50. Mr. MICHEL (December Twelfth Movement International Secretariat), having noted that, for the fourth time running, the United States of America had failed to present to CERD its report on racial discrimination within its borders, said that the most relevant current form of racism was its incorporation into the engine of a powerful and efficient machine, such as the Government of the United States of America or a financial superstructure such as the International Monetary Fund (IMF). Racism was not an emotional sickness which people acquired but an economic tool and, subsequently, a learned behaviour.

51. Having been used initially to justify the transatlantic slave trade, racism was currently being used to control the production and distribution of the world's goods and services with resources pillaged from and produced in the South and distributed in abundance in the North. The international community should review the interests of the world economies to see if they were consistent with the standard of democracy held by most of the world.

52. Nearly one-third of the people of Africa relied wholly or partly on imported food and Africa accounted for only 3 per cent of world trade. That was the result of the IMF's structural adjustment policies which had weakened the capacity of African Governments for economic management by insisting that they move out of the economic area. The racist policies of the imperialist powers of the North were also evident in their funding practices: according to the United Nations High Commissioner for Refugees (UNHCR), recent pledges of aid to deal with the refugee crises in sub-Saharan Africa had amounted to US$ 127 million, whereas the United States of America and the countries of Europe had provided US$ 225.7 million through UNHCR programmes for the 850,000 refugees of Kosovo.

53. The Sub-Commission should establish once and for all that the transatlantic slave trade was a crime against humanity. There had been no compensation for those who had suffered from the effects of that trade, and blacks in the United States of America continued to suffer from poor education, high unemployment, high rates of incarceration, poor health care and inadequate housing. The Sub-Commission should encourage the inclusion of grass-roots NGOs in the preparations for and participation in the World Conference, and recommend to the Commission on Human Rights that Brazil should be the Conference's venue.

54. Mr. GUPTA (Indian Council of Education) said that there continued to be a direct relationship at the global level between poverty and skin colour that amounted to a form of apartheid. In many developed countries, immigrants suffered discrimination in employment, wages, opportunities for promotion and social interaction, and organizations and parties had emerged in some countries which mobilized support on the basis of racial superiority. There were 150 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination but not many of them had made declarations in respect of its article 14 whereby a State party recognized the competence

of CERD to receive and consider communications from individuals or groups of individuals within a State's jurisdiction claiming to be victims of a violation of any of the rights set forth in the Convention. Most situations of conflict traced their origins to religion or ethnicity, the sentiment of superiority being at their core. His organization was thus in favour of holding a World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

55. Ms. PATTY (Interfaith International) said that the most effective ways for Governments to fight racism were: to fund the World Conference; ratify the International Convention on the Elimination of All Forms of Racial Discrimination; and pass legislation to implement all relevant provisions of those instruments. Her organization thanked Mr. Oloka-Onyango for his informative study on globalization and racism (E/CN.4/Sub.2/1999/8). Globalization was bringing a new group of participants into the human rights arena and they needed to be educated in those rights and the obligations they entailed.

56. Governments often turned a blind eye to the treatment of indigenous peoples who were regarded as standing in the way of "progress", i.e. the exploitation of natural resources. One case in which the voice of the human rights community had been listened to was the struggle of the Ogoni people with the international oil companies in Nigeria. In the Amazon region, deforestation had not only disrupted the way of life of the indigenous peoples but had affected the ecosystem worldwide.

57. There had been recent shocking examples of racial hatred and violence in the Western world, including the United States of America where young coloured men were much more likely than others to be killed or imprisoned, and young women to be denied access to the means of meeting basic personal needs.

58. Conflict in the Darfur area of Western Sudan had pitted two groups of peoples against one another through stereotyped identifications. A glaring example of discrimination against indigenous people was their exclusion from a large shopping complex built in Irian Jaya for the personnel of the world's largest copper and gold mine, where their presence was alleged to make other shoppers feel uncomfortable. She called upon Member States to fund the Conference, pay their dues and work together to end the madness of racism and racial discrimination.

59. Mrs. WARZAZI said that declining economic conditions in developing countries were compelling an increasing number of people to seek a living abroad for themselves and their families. Their departure, which was often clandestine, exposed them to the hazards of a journey organized by unscrupulous traffickers who extracted the last penny from them before abandoning them to the elements of sea or land. A sad lot awaited those who survived the journey - racism and rejection.

60. It was only when acts of discrimination reached a pitch of criminality that reactions were at long last aroused. She had particularly in mind both the recent grave events in Catalonia, which had claimed many victims, especially in the Moroccan community, and the resulting demonstrations by Spanish human rights organizations. Racist violence had become a major factor

in what were regarded as leading Western democracies. According to a recent report, the number of racist attacks in Austria not only by young extremists but also by police had increased by 15 per cent over the preceding year.

61. Some observers had even warned of the possible establishment of a racist regime within the European Union, and the Simon Weisenthal Centre had identified over 1,400 Internet sites in North and South America and Europe that defended racism, anti-Semitism, anti-Islamism and terrorism. In Italy, which had received over 200,000 immigrants at the beginning of the current year fundamentalist Catholics had called upon the people of Turin to "protect and defend the identity of Christian civilization from the Muslim invasion". In Asia, following the economic upheaval, migrant workers had been the first to find themselves without work and faced with ruthless expulsion. The Third Decade to Combat Racism hardly seemed to be achieving its objectives. Praiseworthy measures had, however, been adopted by a number of countries: Belgium had modified its Constitution to make racism in the press punishable by law. The Migrants' Forum of the European Union provided a means of drawing the attention of the 15 European Union countries to migrants' grievances. Manifesto 2000, launched by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in favour of a culture of peace and non-violence, had identified the basic problem as inequality, which engendered frustration, injustice, domination and racism.

62. She hoped that the Special Rapporteur recently appointed by the Commission on Human Rights to promote the rights of migrant workers would succeed in persuading the Governments to adopt policies to convince their societies that migrant workers should not be regarded as job-stealers, wage undercutters, and drug traffickers or terrorists, and to recognize the positive impact of immigration on social well-being. The Special Rapporteur should also grapple with the problem of clandestine immigration, which, in spite of the Schengen Agreements, had become a major subject of political debate and often resulted in the very real problems of legal immigrants being ignored.

63. The problem of migration would best be dealt with not by building walls around countries but by the provision of development programmes for the countries of origin. Fear and rejection of the unfamiliar could be overcome by better balanced mutual knowledge.

64. Mr. SHAMSHUR said that the statements made by a number of NGOs supported the conclusions of the Commission's working group of intergovernmental experts on the human rights of migrants that the full enjoyment of human rights was being denied them. The Sub-Commission would best serve the cause of the human rights community by directing its attention to comparatively neglected areas of the general migrants' situation, which was exacerbated by the increased mobility of populations resulting from globalization.

65. One such area was the rights of non-citizens, highlighted by Mr. Weissbrodt's working paper. He hoped that Mr. Weissbrodt would continue his work on that subject in concert with the CERD and in the light of the forthcoming World Conference. Another area deserving special attention from the Sub-Commission was the role played by the mass media, which had both

negative and positive aspects. While their role in stereotyping migrants was well known, they also had a positive role to play in spreading objective information about migrants and their rights, a process to which public and private institutions could also contribute.

66. One of the most important areas for Sub-Commission activities was the deplorable phenomenon of traffic in human beings to which migrants were particularly vulnerable. Women and children were increasingly becoming victims of criminal gangs engaged in prostitution and pornography. The Sub-Commission could help to establish international standards and promote measures to combat trafficking and punish its perpetrators, and to establish mechanisms to ensure their effective implementation. The issue of affirmative action, which was receiving wide attention and was much debated in many countries, was also one that the Sub-Commission should address.

67. Mr. OLIVER (International Institute for Peace) said that racial discrimination persisted in an age of supposed enlightenment, as was starkly illustrated in a study of the contrasting policies of India and Pakistan, carried out by his organization. India had chosen the path of secular democracy and had succeeded in reducing intolerance and discrimination by legal action and constitutional reform. The Indian media had guarded the ethos of equality, and the educational system had fashioned generations dedicated to the pursuit of modernity and scientific achievement.

68. Pakistan, on the other hand, had fallen into the hands of a succession of military dictatorships, and religion - the basis on which the country had been created - had become the tool of repression. A series of laws sanctioned discrimination against religious minorities and women, and where the State structure "fell short", fundamentalist groups took over. Attacks on the media, on minority religious and ethnic groups, such as the Mohajirs, and on minority sects, such as the Shias, all testified to a growing ethos of State-sanctioned intolerance. The power of fundamentalist groups was such that they even represented a threat to the Government if it failed to espouse their policies. That was a situation that could not be ignored by the human rights community, which should see in it not only a threat to the rights of the people of Pakistan but a grievous setback to the worldwide struggle against racial and other forms of discrimination.

69. Mr. ALI (Afro-Asian Peoples' Solidarity Organization) said that the existence of a pool of cheap labour from the developing countries had made an essential contribution to the economic transformation that had enabled countries such as the oil-producing ones and Western European countries devastated by war to achieve a high level of prosperity. When economic development stagnated, however, the foreign or "guest" workers were the first target of frustration, as was witnessed by the attacks on the Turkish labour force in Germany, and the call to halt immigration in France.

70. The very countries that propounded the theories of free trade, such as the United States of America, Australia, and the United Kingdom, were currently in the forefront of moves to restrict the mobility of labour. Old prejudices of colour and creed were once again coming into play, leading to such abuses as the ill-treatment of maidservants in the Gulf countries, the

imposition of quotas, forfeiture of passports and wages, attacks on foreign workers, denial of recourse to law, and the exploitation of female employees for sexual gratification. The only cure for xenophobia was education, resulting in a radical change of attitudes. The Sub-Commission should demonstrate its concern about the rights of migrant workers by investigating the record of those countries that had achieved economic success on the backs of poor labour from the developing countries.

The meeting rose at 12.55 p.m.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 10th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 10 August 1999, at 3 p.m.

Chairman: Mr. HATANO

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COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

(b) XENOPHOBIA (continued)

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GE.99-14670 (E)

The meeting was called to order at 3.05 p.m.

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

(b) XENOPHOBIA

(agenda item 3) (continued) (E/CN.4/Sub.2/1999/5, 6, 7 and Add.1, 8, 40; E/CN.4/Sub.2/1999/NGO/3, 4, 12; E/CN.4/1999/12, 15 and Add.1, 16 and Corr.1 and 2)

1. Mrs. HAMPSON congratulated Mr. Weissbrodt on his working paper on the rights of non-citizens (E/CN.4/Sub.2/1999/7 and Add.1), in which he stressed that any subsequent work by the Sub-Commission should focus on the problems specifically relating to discrimination against non-citizens, as opposed to discrimination against migrants, since the Commission on Human Rights had appointed a special rapporteur on the human rights of migrants at its preceding session.

2. Many of the issues raised by Mr. Weissbrodt would benefit from further examination, for example, the question of rights which attached to membership of a group of States such as the European Union and which could not be claimed by other non-citizens who were citizens of a non-member country of the European Union. There was also the question of the case law of regional human rights mechanisms, particularly that of the European Court of Human Rights on the issue of the expulsion by a State of non-citizens with family ties in that State, which showed that, in a great many cases, the decisions of the European Court differed from its ruling in the Bouchelkia v. France case referred to by Mr. Weissbrodt in his report.

3. Some problems in ensuring respect for the human rights of non-citizens were the result of accidents of history which had not yet been corrected. The concepts of nationality and citizenship were not always coterminous. For example, in the United Kingdom, a British national was a British citizen with a right of entry into the United Kingdom. There were types of British citizenship which did not carry that right with them. Once inside the United Kingdom, moreover, some rights, such as access to certain benefits, attached to citizenship of a Commonwealth country. The situation was complicated by the fact that aliens were not defined as non-citizens, but as persons who were not citizens of a Commonwealth country and not Irish.

4. It should therefore be recognized that the internal legal order might not or might not solely classify beneficiaries of rights in terms of citizenship. In his important statement under agenda item 2, Mr. Oloka-Onyango had raised the issue of "institutionalized racism", which took the form of overtly discriminatory practices. Those practices were neither encouraged nor condoned by the authorities. The problem was, rather, that they did not even recognize the existence of such discrimination, as illustrated by the way in which the London Police had investigated the killing of Stephen Lawrence, a British citizen of Caribbean origin. Institutionalized racism was particularly likely to occur where the prejudice was shared by the community at large. That raised the question of the role of the media.

5. The media played a vital role in shaping public perception of non-citizens and other minorities. States had to take action against those who disseminated racist ideas and protect freedom of expression. Article 20 of the International Covenant on Civil and Political Rights restricted such freedom by providing that any advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence was prohibited by law. Article 20 did not, however, solve the problem, as shown by the reservations to it formulated by some States and a decision by the European Court of Human Rights in the Jersild v. Denmark case. The journalist in question had broadcast neo-Nazi ideas in order to persuade the authorities to take action to prevent situations which led some persons to espouse such ideas. He had been prosecuted and the Committee on the Elimination of Racial Discrimination had congratulated Denmark for having taken effective action against the advocacy of racial hatred, whereas the European Court of Human Rights, in which the journalist had brought proceedings, had considered that Denmark had committed a violation of his freedom of expression. It therefore had to be asked what a State was supposed to do in such a case. It was not always easy to determine whether or not a journalist was advocating or inciting racial hatred. In the United Kingdom, for example, the tabloid press slipped very easily from jingoism into xenophobia, particularly when covering problems relating to asylum seekers, refugees and economic migrants.

6. Recent events in Rwanda showed how far unchecked incitement to racial or ethnic hatred could go. Where incitement to racial or ethnic hatred had been clearly established, as in Rwanda with Radio Mille Collines, the international community had to sound the alarm and remind the States concerned of their obligations, if necessary, at emergency sessions of the Commission on Human Rights. Under article I of the Convention on the Prevention and Punishment of the Crime of Genocide, the Contracting Parties undertook to prevent and to punish that crime. Consequently, the Office of the High Commissioner for Human Rights and the Commission on Human Rights, possibly in cooperation with the Committee on the Elimination of Racial Discrimination, should set up a monitoring system in order to respond rapidly where it was clear that the incitement to racial hatred was likely to produce results which a State was either unable or unwilling to prevent. Consideration should also be given to the possibility of prosecuting journalists, under article 25 of the Statute of the International Criminal Court, for incitement to crimes against humanity. Bombing television stations was not a solution. Unless appropriate and effective action was taken in that field, it was to be feared that incitement to racial and ethnic hatred would again have tragic consequences.

7. Mr. SYED (Himalayan Research and Cultural Foundation) said that, although 128 States had ratified the International Convention on the Elimination of All Forms of Racial Discrimination, xenophobia was taking on alarming proportions in the world today and new techniques were being used to incite racial and religious hatred. For example, the so-called Muslim Mujahidin were distorting Islam and committing massacres in the name of a so-called "jihad", which had become a strategic weapon in the hands of some countries with expansionist designs.

8. In Jammu and Kashmir, for example, the barbaric massacre of dozens of non-Muslim villagers and migrant labourers by the so-called Muslim Mujahidin backed by Pakistan had caught the international community's attention.

Recently, Pakistan had launched the Mujahidin in an attack on Kargil that had led to the displacement of over 30,000 persons. The Pakistani Government was hiring the services of fanatic religious persons to teach xenophobia to poverty-stricken young Muslims in many countries in camps organized by the Pakistan army. The instruction given in those camps was designed to turn the entire world into a battle ground in the name of "jihad", whereas the message of Islam was one of brotherhood and amity.

9. His organization urged the Sub-Commission and the representatives of the international community to apply pressure on Pakistan to stop that dangerous trend of promoting xenophobia.

10. Mr. GUISSÉ said that slavery was the most serious form of discrimination there was. In Mauritania, that practice continued to survive despite the measures taken to eradicate it. In Sudan, thousands of persons continued to be sold like animals. That was genuinely something of which civilization should be ashamed. The United Nations should take specific measures to get those countries to put an end to those practices.

11. In the western countries, migrant workers, mainly Blacks, and the members of their families were subjected to serious harassment. Western trade union organizations should take an interest in the problems of migrant workers and urge respect for the relevant ILO conventions. In Europe, the rise of xenophobia, which was being encouraged by some political parties, was a matter of great concern. The border police and the forces of law and order sometimes subjected migrants to inhuman and degrading treatment. Countries of immigration should therefore keep a more effective watch on their border police, for the victims had no remedy. In the United States, the Black population experienced serious discrimination in the administration of justice, as shown by the very high proportion of Blacks sentenced to death. Odious racist crimes continued to be committed in that country.

12. The gaps in international law to which Mr. Weissbrodt had rightly drawn attention could not in themselves explain serious human rights violations resulting from racism and racial discrimination. States had to conduct a courageous policy and draft laws and regulations designed to combat those evils. In that connection, the decision in which the European Court had recently condemned France for torture was to be welcomed. Any serious violations of human rights, wherever they might be committed, had to be condemned in the same way.

13. Mrs. TALBOT (World Federation of Trade Unions - WFTU) said that, since the end of the cold war, conflicts ignited by racism, racial discrimination, xenophobia and intolerance had been proliferating throughout the world, particularly in the Balkans, Africa and South Asia.

14. Poverty was the decisive factor which was creating the breeding ground for the explosion of racist violence. Persons affected by poverty, hunger and joblessness had to find someone to blame for their plight and thus fell prey to incitement to racial and religious hatred, which diverted their attention from the real origins of their misery. Poverty and racist propaganda therefore had to be tackled simultaneously because they were used by those few who had the most to gain by provoking xenophobic behaviour and ethnic

conflict, whether in Kashmir, Afghanistan, Rwanda or the United States, where neo-Nazis were active and the rights of African-Americans and other minorities were being denied.

15. The solutions to those conflicts had to take account of all aspects of human rights and guarantee respect for the economic, social and cultural rights and the right to development of the peoples concerned. Globalization, whose advocates insisted that it promoted the oneness of the human family, was in fact contributing to poverty and hence to segregation along ethnic, religious and racial lines. Moreover, the structural adjustment policies imposed by the IMF and the World Bank had helped cause a vast upsurge in poverty and growing inequalities in access to economic, social and cultural rights which had led to recent bloody conflicts, particularly in the former Yugoslavia, Somalia and Rwanda.

16. In South Asia, the Balkans and Africa, terrorist and mercenary groups, often financed by foreign powers with economic and strategic interests in those regions, capitalized on and actively fermented tensions between ethnic communities. The World Federation of Trade Unions urged the Sub-Commission to compile data on the activities of those groups.

17. Mr. BOSSUYT, commenting on the working paper submitted by Mr. Weissbrodt on the rights of non-citizens (E/CN.4/Sub.2/1999/7 and Add.1), said that one of the new elements that had come to light was that there were distinctions between non-citizens. As far as "distinctions" were concerned, he recalled that the law prohibited only arbitrary, unlawful and unwarranted distinctions, i.e. "discrimination", but not "differentiation". It therefore had to be decided, case-by-case, whether a distinction was based on a ground which was not relevant to the right or freedom in question.

18. No distinction between citizens and non-citizens could be justified as far as civil rights were concerned. As indicated in paragraph 7 of General Comment 15 of the Human Rights Committee (HRI/GEN/1/Rev.2), non-citizens must, for example, not be subjected to torture. However, nationality was a relevant ground for not granting political rights to foreigners, in accordance with article 25 of the International Covenant on Civil and Political Rights. Some States had, admittedly, granted foreigners a limited right to vote at the communal or municipal level, but there was no hard and fast rule at the international level.

19. The question of economic, social and cultural rights was more sensitive. It was not obvious that non-citizens who had never paid into the social security system of the country where they lived, especially if it was financed by tax revenue, could claim assistance on the same basis as citizens of that country. In the case of moonlighters and irregular status workers, the relevant distinction was based on whether or not their work or residence was lawful. A State had no obligation to care for those residing illegally in its territory, but it did in the case of foreigners who had a residence permit and who enjoyed the same benefits as citizens. The problem of undocumented workers was that, because they were illegally in the country where they lived, they were very vulnerable and, if they went back to their own country, they had virtually no possibility of finding a job or receiving benefits from the State. The only way of combating violations of the rights, particularly the

socio-economic rights, of those non-citizens and the discrimination to which they were subjected was to help countries of origin to develop, and that required greater cooperation between industrialized and developing countries.

20. With regard to distinctions between non-citizens, there was a difference between categories of rights. No distinction was allowed as far as civil rights were concerned, whereas, in the case of political rights or economic and social rights, such a distinction was not necessarily discriminatory. On a reciprocal basis, States could grant political rights to non-citizens who were citizens of certain countries with which they formed an economic and political union; they might have provided for community citizenship. Similarly, a State could exempt the citizens of certain countries from the visa requirement or facilitate their access to the job market and entitle them to certain social benefits.

21. The problems encountered by the Roma to which Mr. Weissbrodt had also referred should, of course, be carefully considered by the Sub-Commission and definitely called for the preparation of a concerted programme of action, but that issue did not belong in a study on non-citizens, since the Roma were usually entitled to the nationality of the country where they lived. A specific initiative on their behalf would be welcome.

22. He noted that, in order to avoid duplication, Mr. Weissbrodt hesitated to include questions relating to migrants in the planned study because of the Commission's decision to appoint a special rapporteur on the human rights of migrants. There was, however, a basic difference between a Sub-Commission rapporteur and a Commission rapporteur. The latter followed developments in the human rights situation in a particular country or in all countries, on the basis of a specific theme, in the case of a thematic rapporteur. He contacted States to shed light on cases of alleged violations or to try to bring influence to bear. The mandate of a Sub-Commission special rapporteur was to prepare an academic study on a particular topic containing a comprehensive analysis of the problems that arose and suggestions and recommendations for solving them.

23. In conclusion, he was of the opinion that the Sub-Commission must carry out a study of the rights of non-citizens as a matter of priority, on the understanding that emphasis should be placed on non-citizens without residence permits in the host country.

24. Mr. GOONESEKERE said that affirmative action had been born in the United States at a time when it had been more than obvious that, although there were many opportunities for advancement, inequalities continued to exist, to the detriment of non-white minorities. Affirmative action had therefore been established in order to correct the injustices suffered by those minorities in terms of housing and of access to education and employment and, although that policy had at first been unpopular, it had gradually produced results.

25. In India, the Constitution recognized the principle of affirmative action, containing as it did special provisions on behalf of members of castes and "scheduled" tribes applying for jobs in the public service. In Sri Lanka, a minority rights movement had come to the fore and obtained the establishment

of quotas for recruitment and promotions in the civil service and the parastatal sector. However, there had been a case in which the application of the quota principle had worked against a person belonging to a minority. The court handling the case had ruled that the quota system had not been justified in respect of promotions and quotas had since been abolished.

26. He noted that affirmative action had become broader in scope and now also applied to women, homosexuals, AIDS victims and disabled persons, who were not minorities as such. For some countries which had experienced colonialism and where a linguistic minority was in the elite, affirmative action had to be redefined in order to restore a balance and avoid any conflict with universally recognized human rights, which he hoped would be taken into account in a future study.

27. Mr. RAJKUMAR (Pax Romana) said that, as part of the preparations for the World Conference against Racism, the Sub-Commission should do everything possible to banish the scourge of racial discrimination, which was exercised primarily against ethnic groups and national minorities whose rights were systematically violated, a situation which had led to a large number of conflicts that had caused many victims in Africa, especially in the Great Lakes region, in Europe - for example, in Kosovo - and in Asia. The Sub-Commission could not remain silent in the face of such grave crimes against humanity and had to take effective measures to protect the victims of those ethnic conflicts and to promote their legitimate rights, including their right to self-determination.

28. With regard to the rights of non-citizens, Pax Romana appreciated the working paper submitted by Mr. Weissbrodt (E/CN.4/Sub.2/1999/7 and Add.1), which drew attention to the conspicuous absence of national and regional mechanisms for protecting those rights in Asia. In the light of what was stated in paragraph 32, the impact of the Euro currency on non-citizens should be considered, for it might create new barriers, and the 1990 Amsterdam Treaty should also be studied because it was supposed to provide a legal framework for non-discrimination in the European Union.

29. Pax Romana also welcomed with satisfaction the working paper on the nexus between globalization and racism (E/CN.4/Sub.2/1999/8), which highlighted the various forms - social, economic and environmental - of racism. Social and economic globalization was perpetuating "a new form of slavery", namely, poverty in many parts of the world. Pax Romana therefore urged the author of the study to continue his work and show the nexus in other regions, including Africa and Asia.

30. The situation of migrant workers, especially women migrant workers, in the Middle East, Asia and Europe was a matter of great concern. Most of them were domestic workers who were subjected to discrimination and marginalization. It was therefore essential to set up a legal framework for the protection of their rights in all those regions, particularly when the current absence of such mechanisms denied them the right to a remedy in the event of the violation of their rights.

31. In conclusion, Pax Romana supported the organization of the World Conference against Racism and the continuing efforts of the Committee on the

Elimination of Racial Discrimination and urged the Sub-Commission to create new strategies to combat racism in all its contemporary forms, including ethnocentrism.

32. Mrs. MILAD (Association to Defend Tunisians Abroad - ADTE) said that the question of the protection of emigrants was a matter of constant concern in Tunisia, since emigrants were an integral part of Tunisian society. ADTE was working to promote the economic and social advancement of emigrants and their right to dignity in an atmosphere of tolerance and stability. In many countries, immigrants were subjected to discrimination that sometimes reached intolerable levels in all areas. That situation was a violation of the most basic rights to human dignity and physical integrity and was contrary to the spirit and letter of all international human rights instruments. Because of the increasingly serious economic recession in many countries, rising unemployment and the revival of nationalism, immigrants were singled out as the cause of all the problems of developing societies. Even those in lawful situations under legislation on residence and employment were subjected to nit-picking discriminatory regulations and did not enjoy genuine legal security.

33. The Tunisian Government had adopted a set of measures on behalf of Tunisian citizens abroad and, in that connection, ADTE recalled that, in the statement he had made to the European Parliament on 22 June 1993, President Ben Ali had proposed that a European-North African Charter should be drawn up to define the rights and duties of the North African community in Europe. She appealed to all non-governmental organizations working to achieve the same objectives on both sides of the Mediterranean to help build a forum for dialogue, consultation and partnership in order to promote the integration of immigrants rather than their assimilation, which deprived them of their specific cultural characteristics. She also invited them to combat all forms of discrimination based on nationality, race and religion so that the problem of emigration might be better understood.

34. Mr. EIDE congratulated Mr. Bossuyt, Mr. Pinheiro, Mr. Oloka-Onyango and Mr. Weissbrodt for their very useful contributions to the analysis and prevention of the scourge of racism. He particularly endorsed the six objectives of the World Conference against Racism which Mr. Pinheiro had outlined in his statement, as well as his proposal that they should be submitted to the preparatory meeting for the World Conference against Racism in May 2000.

35. He was also convinced that the working paper which Mr. Bossuyt would prepare on affirmative action and its practical application would go a long way towards clarifying the issues which needed to be discussed. In his opinion, a distinction should be made between transitional special measures to create social equality, on the one hand, and permanent measures which were designed to enable a minority group to preserve its own identity and were taken mainly in the cultural field, on the other.

36. With regard to Mr. Weissbrodt's working paper on the rights of non-citizens (E/CN.4/Sub.2/1999/7 and Add.1), he was of the opinion that the question should be approached somewhat differently, taking as the starting point the idea that all human rights applied to all and that all inhabitants

of a country were entitled to claim all human rights against the Government of that country, with justified exceptions, as Mr. Bossuyt had indicated, in respect of political rights, which were, moreover, provided for in the International Covenant on Civil and Political Rights. According to a recent general comment by the Human Rights Committee, the right to return to one's own country must also be interpreted as the right to return to one's country of permanent residence. It should be noted that the Committee on the Rights of the Child had stated, in its concluding observations on the report of Norway, that the authorities of that country should guarantee the right to education of all children, including the children of illegal immigrants. It was therefore obvious that any distinction between citizens and non-citizens must be regarded as an exception and justified by reference to international standards. He thus thought that Mr. Weissbrodt should continue his study of that question. He also agreed with the idea put forward by Mr. Bossuyt that a study should be carried out specifically on the Roma, since the discrimination to which they were subjected was not necessarily related to their lack of citizenship.

37. The working paper submitted by Mr. Oloka-Onyango (E/CN.4/Sub.2/1999/8) showed convincingly how the process of globalization in its present form tended to exacerbate racial, ethnic and religious tensions. He drew attention, for example, to the asymmetry between freedom of movement of goods and capital, as well as managers of TNCs, and freedom of movement of labour, which showed that there was no global market for the workforce. That was one of the major reasons for current inter-ethnic tension.

38. He endorsed the recommendation that the Committee on the Elimination of Racial Discrimination, and, in his opinion, the Sub-Commission, should examine ways in which international human rights instruments could be better applied to non-State actors which played a decisive role in the process of globalization. In view of the problems that existed in many countries, particular attention should also be given to the training of police and immigration officers so that they could do their work in a non-discriminatory way, as well as to the role of the Committee in that regard. Thanks to the work it had undertaken, the Sub-Commission would be able to make a useful contribution to the World Conference and to action to combat racism in the context of globalization.

39. Mrs. PARKER (International Educational Development) said that racism was particularly evident in the wars being waged against the Kurds in Turkey and the Tamils in Sri Lanka. To hide their policies and defend themselves against any accusations of violating international humanitarian law, the Governments of those countries were characterizing those wars as "terrorism" and "counter-terrorism". Under the guise of "nation-building", they were actually trying to exterminate the Kurds and the Tamils. For example, nearly 400,000 Tamils were facing starvation in Mannar and the Vanni now that the denial of food was being used by the Government of Sri Lanka as a military tactic.

40. Racism and racial discrimination were being worsened by the fact that the competent United Nations bodies did not treat all situations equally.

Thus, Kosovar refugees had received nearly $1.40 per day in food and medical care, while Sierra Leone's population received only $0.11 per day and Tamils in the Vanni even less.

41. The Sub-Commission could take concrete steps to improve the situation. It could condemn Turkey and Sri Lanka for their racist policies and violations of humanitarian law and then look into other armed conflicts which did not receive adequate attention by the Commission and urge the United Nations to set up a humanitarian aid distribution programme for all victims of war and catastrophe, without distinction of any kind, on the basis of need.

42. Mrs. MOYA (American Association of Jurists) said that the Government of Honduras was allowing international corporations to set up operations on land traditionally occupied by African-Honduran communities. In so doing, Honduras was violating ILO Convention No. 169.

43. There was labour market segregation in Peru, where racist criteria determined who got and kept jobs. Discrimination was even harsher in the case of indigenous and Black women and girls who were employed as domestic servants in slavery-like conditions. The same was true with regard to citizenship, the exercise of political rights and access to the courts and public places.

44. In Colombia, despite a 1993 act recognizing the ethnic and cultural characteristics of the Black African-Colombian communities and their right to be consulted about policies and projects of concern to them, the Government had recently enacted a decree regulating scientific research on biological diversity which did not take account of the way they managed the environment or of the special regimes to protect their traditional know-how that were being established. Continuing clashes between guerrilla fighters and paramilitary groups in the Pacific region had also led to the forced displacement of those population groups and violations of their territorial rights.

45. In Uruguay, no compensation had been granted to the Black communities which had been violently expelled from the centre of the capital, Montevideo, and forced to live in outlying areas during the military dictatorship in 1976. Ninety-two per cent of the Blacks in that country lived below the poverty line.

46. Her association again denounced the fact that hundreds if not thousands of foreigners were being detained in the United States, sometimes for years, before being expelled. They were either illegal immigrants whose expulsion had been ordered or legal immigrants who had committed crimes, who were serving prison sentences before being expelled and whom no other country wanted to take. That situation was a legal and humanitarian scandal with which the Sub-Commission's Working Group on Arbitrary Detention should deal.

47. Mr. QADRI (World Moslem Congress) said that, despite the international community's efforts, racism and intolerance were on the increase and there was a need for concerted and integrated action to combat those problems. The World Moslem Congress congratulated Mr. Oloka-Onyango for his report on

"Globalization in the context of increased incidents of racism, racial discrimination and xenophobia" (E/CN.4/Sub.2/1999/8), which raised serious issues calling for urgent attention.

48. In recent years, a new term had become part of the racist vocabulary, namely, "ethnic cleansing", which often went together with hatred of the religion to which the victim group belonged. A glaring example was the destruction in the last 10 years of Kosovo's cultural heritage, including many mosques. In Kashmir, Indian occupation forces were systematically destroying mosques and places of worship. Intolerance and xenophobic violence had to be stopped. Immediate measures also had to be taken to combat the use of information technology, particularly the Internet, to spread racial hatred.

49. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which was scheduled for the year 2001, should also consider the question of the institutionalized racism of the Hindu caste system from which over 200 million people suffered.

The meeting rose at 4.55 p.m.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 11th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 11 August 1999, at 3 p.m.

Chairman: Mr. HATANO

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COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION:

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES;

(b) XENOPHOBIA (continued)

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GE.99-14690 (E)

CONTENTS (continued)

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS:

(a) THE INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS;

(b) THE REALIZATION OF THE RIGHT TO DEVELOPMENT;

(c) THE QUESTION OF TRANSNATIONAL CORPORATIONS;

(d) THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS

The meeting was called to order at 3.05 p.m.

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION:

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES;

(b) XENOPHOBIA

(agenda item 3) (continued) (E/CN.4/Sub.2/1999/5, 6, 7 and Add.1, 8, 40; E/CN.4/Sub.2/1999/NGO/3, 4, 12; E/CN.4/1999/12, 15 and Add.1, 16 and Corr.1 and 2; Commission resolution 1999/78)

1. Ms. MORENO FONTER (International Labour Office) said that one of ILO's activities was assisting migrant-sending and migrant-receiving countries to implement ILO standards relating to the protection of migrant workers' rights. The 1998 ILO Declaration on Fundamental Principles and Rights at Work emphasized that migrant workers had special needs in the area of social protection.

2. After considering the report of the ILO Committee of Experts on the Application of Conventions and Recommendations relating to the evaluation of the application, by States parties, of ILO Conventions Nos. 97 and 143 on migrant workers, the International Labour Conference had agreed, at its eighty-seventh session, that the question of migrant workers should be included in the agenda of an early session of the Conference, with a view to revision of the ILO instruments.

3. ILO welcomed the appointment of a Special Rapporteur on the human rights of migrants, whose role would be to draw international attention to the problems of discrimination and exploitation facing migrants around the world and to work towards upholding the basic rights of migrants and their families. ILO was ready to assist the Special Rapporteur in ensuring the continued complementarity of the work of the two organizations.

4. Ms. ANDREEVSKA (Observer for The former Yugoslav Republic of Macedonia) observed that article 1, paragraph 4, of the International Convention on the Elimination of All Forms of Racial Discrimination was an important provision for disadvantaged minorities, since the "special measures" - of which affirmative action was one - taken to ensure the progress of those minorities "shall not be deemed racial discrimination". Article 2, paragraph 2, actually obliged States to take affirmative action.

5. In 1993, the World Conference on Human Rights had emphasized the universality of human rights and the relationship between democracy, development and human rights, issues which particularly affected minorities. However, the three preparatory conferences, held in Tunis, Bangkok and San José, had stressed another concept, namely, the cultural background and level of development of countries, which were considered to influence the realization of human rights. The Conference, far from ratifying that restricted view of human rights, justified by certain States which had invoked

their particular national characteristics, had unequivocally settled the question by stating that the promotion of all human rights was a legitimate concern of the international community.

6. Her delegation welcomed the fact that, at the Vienna Conference, the Council of Europe had roundly denounced anti-Semitism and that the European Parliament had adopted the strongest ever resolution on that question, namely resolution A3-0127/93.

7. Her Government was convinced that democracy and development were fundamentally linked, and that only a democratic regime could in the long term ensure the coexistence of ethnic, religious and cultural groups by minimizing the risk of conflict.

8. Mr. QIAO Zonghuai (Observer for China) said that his country fully endorsed the convening of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

9. For years, his Government had been committed to protecting the rights of the 55 minorities who lived in China and had implemented a series of effective policies, including the system of autonomy, which had changed the situation in the regions where the minorities lived.

10. The current year was the fortieth anniversary of democratic reforms in Tibet. His Government had made great efforts to promote the economic and social development of the autonomous region of Tibet, allocated funds for the renovation of monasteries and set up a substantial infrastructure. The Tibetan people were able to exercise not only constitutional rights, including the right to freedom of religion, but also various special rights provided for under the regime of autonomy. Although it was internationally recognized that Tibet formed an integral part of China, some separatists had recently been trying, in defiance of the fundamental changes in Tibet, to separate Tibet from China by using as a pretext the protection of human rights and calling for a high degree of autonomy. The Tibetan people and the Chinese people were firmly opposed to those claims. His delegation had drafted a document on the progress achieved in Tibet in the course of 40 years of efforts devoted to the development of the region. That document would give a clearer picture of the situation in Tibet.

11. Mr. MERIC (Observer for Turkey) said that the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance was of particular significance since, on the eve of the third millennium, racism continued to exist and was even growing in magnitude, adopting subtle forms.

12. The claim that racism existed all over the world was not tenable, since that view confused discrimination on grounds of race and discrimination on grounds of ethnic origin. The most extreme form taken by the latter, ethnic cleansing, had a cause - a desire to seize land. Racism could admittedly reappear in the event of economic recession, unemployment and an increase in the number of asylum seekers, but those circumstances could not be considered as real causes since there were countries where the economic situation was worse and yet there were no racist incidents.

13. One characteristic of racism was the innocence of the person subjected to it. He was "victimized" because of his physical characteristics. In that respect, the Islamophobia and Negrophobia of today had replaced the anti-Semitism of the past.

14. Since migrant workers and their families were often victims of xenophobic discrimination and violence, even when they had been legally resident in their receiving country for generations, his delegation invited the Sub-Commission to pay particular attention to that category of persons during the preparatory work for the World Conference and to prepare specific proposals concerning preventive and remedial measures. In that connection, his delegation welcomed the working papers prepared by Mr. Weissbrodt and Mr. Oloka-Onyango, and was convinced that the forthcoming studies by Mr. Pinheiro and Mr. Bossuyt would constitute very useful contributions to the Conference.

15. Mr. NEGRIN (Observer for Mexico) said that his country, which received a large number of asylum seekers and refugees, attached great importance to the defence of the human rights of migrants. Some 22,000 Guatemalan refugees, whose migration status had been regularized under a programme inaugurated in 1996 with UNHCR support, had decided to remain in Mexico, while 40,000 others had freely chosen to return to their country. On the occasion of the visit by Mrs. Ogata in July 1999, his Government had announced its intention to accede to the Convention and Protocol relating to the Status of Refugees. As to the International Convention on the Rights of All Migrant Workers and Members of Their Families, Mexico had ratified it in December 1998. He urged countries which had not yet done so to accede to that Convention in order that it could enter into force. In the meantime, it was essential to create a multilateral mechanism responsible for supervising the observance of the human rights of migrants, of whom there were about 130 million around the world, including 30 million in an illegal situation. It was precisely on Mexico's initiative that the Commission on Human Rights had decided, in March 1999, to appoint a special rapporteur on the human rights of migrants.

16. At the regional level, mention should be made of the Puebla Conference, which had been held on 28 and 29 January 1999 and had been attended by representatives of the United States and Canada, in addition to the Central American countries. That Conference had examined, in particular, the migratory flows caused by hurricane Mitch. The protection of Mexican migrants in the United States was the subject of a continuing dialogue with the latter country.

17. International migration was a phenomenon which was growing at the same rate as globalization; there was practically no country in the world that was not affected. For that reason, the international community must give priority to that question and examine, in particular, the principal obstacles to the effective enjoyment of migrants' rights, namely xenophobia and racism. In that respect, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance should provide an opportunity for taking a global approach to that question.

18. Ms. JANJUA (Observer for Pakistan) said that at the present time new forms of discrimination were emerging, such as Islamophobia, and that, despite the existence of fairly adequate international instruments, racism was rampant and more insidious than ever before. The use made of the Internet by certain extremist groups was one example. For that reason, she welcomed the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which would provide an opportunity for a vigorous reaction.

19. She associated herself with the congratulations extended by the observer for Turkey concerning the working papers of Mr. Weissbrodt and Mr. Oloka-Onyango which, together with that being prepared by Mr. Bossuyt on affirmative action and the joint study by the Sub-Commission and the Committee on the Elimination of Racial Discrimination, flagged the direction which the Sub-Commission's efforts must take. Those studies showed that the Sub-Commission had much to contribute not only to the Commission, but to the United Nations system as a whole.

20. If the question of the rights of non-citizens was taken up in a more far-reaching study, it should answer the following questions. Did the existing instruments fully protect the rights of non-citizens? To what extent was the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live implemented in practice? What decision should be taken if the existing human rights protection mechanism proved insufficient in guaranteeing the rights of non-citizens? Did general comments command the same authority as the provisions of the international instruments?

21. In connection with Mr. Oloka-Onyango's excellent working paper on globalization in the context of the increase in incidents of racism, racial discrimination and xenophobia, she also thought that racism was on the rise and that "globalization is essentially benefiting a small, privileged minority, while ... marginalizing a considerable number", who were always the prime targets of violations. The subject was worthy of a more searching examination.

22. Her delegation was obliged to react to the fact that government-organized NGOs from India, which used them as foreign policy instruments, were attacking Pakistan under every item on the agenda, even though the subject of their statements was unrelated to the question under consideration. It was time to put a stop to those flagrant abuses.

23. Mr. FAN Guoxiang said that affirmative action should not be regarded as discrimination against persons who did not benefit from it. Some groups, notably women, minorities, older persons and disabled persons, needed the support of the State and the understanding of society.

24. In China, the Constitution accorded special treatment to minority groups, and a quota system had been established for their benefit in the public sector. No one had ever complained of being discriminated against because of that policy.

25. For his part, he preferred to speak of preferential treatment rather than affirmative action. In that connection, stress should be laid on the

fact that such preferential treatment was accorded to certain groups and did not therefore concern individual rights. Overemphasizing those rights might give rise to misunderstandings.

26. Some States have given a legal form to the protection accorded to certain groups, which is a positive development. Sometimes, an effort in the area of education might prove necessary in order to enable certain persons to understand the justification for preferential treatment of that kind.

27. On the question of action to combat racism and racial discrimination, the United Nations, and in particular the Commission on Human Rights and the Sub-Commission, must continue their efforts while taking into account the specific conditions which might exist in certain places.

28. Some persons might, on the pretext of combating racial discrimination, engage in separatist activities aimed at the break-up of a particular State. In that connection, a claim that one person could represent a nation was inadmissible.

29. It also happened that, on the pretext of wishing to promote self-determination and combat racism, some persons engaged in political activities aimed at spreading the illusion that the racial problems which existed in a particular country might give rise to intervention. Those persons sought to present that as a model applicable to other countries and other regions. Such an attitude ran counter to the action taken by the Sub-Commission to combat racial discrimination and would not assist in remedying racism. On the contrary, that policy endangered international peace and stability.

30. Mr. MAMDOUHI (Observer for the Islamic Republic of Iran) said that, unfortunately, the phenomena of racism and racial discrimination continued to grow despite the efforts of the international community to protect vulnerable groups and individuals. Muslim minorities were increasingly the target of xenophobic attacks and crimes. His delegation believed that Islamophobia should be examined both by the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance, and by the Special Rapporteur on religious intolerance.

31. States must do everything possible to combat racism and incitement to racial hatred. In that connection, it was regrettable that the new information technologies, including the Internet, should be used to disseminate racist and xenophobic views; they should be used as a tool to promote tolerance. On the question of the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, efforts should be made to ensure that the regional preparatory meetings had available to them the necessary resources to fulfil the very important task facing them.

32. At the fifty-fourth session of the Commission on Human Rights, his delegation had played an active part in the drafting of resolution 1998/26 entitled "Racism, racial discrimination, xenophobia and related intolerance" and had informed the Office of the High Commissioner for Human Rights that it

was prepared to host the Asian regional preparatory meeting for the World Conference. His delegation welcomed the fact that the World Conference was to be held in 2001, which had been proclaimed by the General Assembly as United Nations Year of Dialogue among Civilizations.

33. Mrs. WARZAZI, referring to questions relating to migrants, said that on reading document E/CN.4/Sub.2/1999/7/Add.1 submitted by Mr. Weissbrodt, one did not have the impression that he had complied with the Sub-Commission's request, namely, to examine ways of overcoming impediments to ratification of the International Convention on the Rights of All Migrant Workers and Members of Their Families. In paragraph 3, for example, he seemed to make light of the slow pace at which the ratification process was taking place.

34. In connection with paragraph 5, it should be borne in mind that the General Assembly had decided to formulate a convention on migrant workers because ILO had dealt only with the protection of labour rights. It was in fact because they had been reluctant to grant migrant workers political, civil, cultural and other rights that the representatives of the Western countries had at the outset opposed the formulation of such a convention. For that reason, it had taken 10 years of very tough negotiations to arrive at the adoption of the convention by consensus. It was stated in paragraph 8 that some States might not wish to extend further rights to migrants. The reply to that must be that the Convention did not set forth further rights, but rights to which every person was entitled.

35. Paragraph 10 referred to the costs to the community caused by migrants. It was not really clear what those costs were.

36. As to paragraph 13, there was a misguided tendency on the part of Governments to view migrants as an economic burden whereas they contributed to the prosperity of the countries of employment.

37. If the countries of employment were unwilling to ratify the Migrant Workers Convention, it was undoubtedly because they did not want to lose the advantage conferred on them by the restrictive provision contained in article 1, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination, an advantage which was at variance with the principle of equality of treatment. In order to facilitate the adoption of the Convention, it had been necessary, back in 1965, to exercise a certain degree of flexibility by accepting the introduction of that provision which, it should be emphasized, did not appear in the two International Conventions on Human Rights that had been adopted one year later.

38. It was that absence of a restriction which accounted for the Western countries' misgivings about a convention on migrant workers or the Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live.

39. In that connection, it should be borne in mind, that in human rights matters it was the least restrictive international instrument that had primacy over the others. Consequently, article 1, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination was

obsolete, as borne out by the civil and political rights which certain countries, such as Belgium, the Netherlands or even France, accorded to non-citizens.

40. It was regrettable that, in its general comment 15, the Human Rights Committee should have adopted a conservative attitude to the political rights enunciated in article 25 of the International Covenant on Civil and Political Rights. It could have left a door open by stating that the political rights enunciated in that article were, in principle, applicable only to citizens.

41. She welcomed the fact that the Sub-Commission was to deal with the question of affirmative action. Affirmative discrimination was, in fact, essential in order to restore a certain equilibrium between advantaged and disadvantaged groups, notably women and coloured people. Once the balance had been restored by measures such as the setting of quotas in certain areas, there was no longer any reason to pursue an affirmative discrimination policy. In any event, affirmative discrimination constituted one of the most reliable means of ensuring the advancement of persons suffering from the consequences of discrimination and inequality.

42. Referring to the question of globalization, she wished Mr. Oloka-Onyango every success in his research into the possible links between racism and the impending new order.

43. Lastly, the Sub-Commission's contribution to the future World Conference on racism could be of great importance if Mr. Pinheiro acted on the proposals he had made in his oral presentation.

44. Mr. JOINET said that in many respects globalization was tantamount to Balkanization. The latter phenomenon was linked to racism, one of the most vicious manifestations of which was ethnic cleansing. Mr. Bossuyt should study the means, and notably institutional means, that should be used to remedy that situation and establish a genuine democracy. Democracy meant plurality of opinion, and hence the difficulties encountered with single-party regimes.

45. However, in countries where tension between different ethnic groups ran high, it was not sufficient to obey the rule of plurality of opinion. It might also be necessary to ensure that the different minorities or ethnic groups were fairly represented in the various State institutions, for example the judiciary or the army. That was an extremely sensitive matter, as had been shown in Africa by the failure of the Arusha agreements.

46. The main problem was that if one wished to pursue an affirmative action policy, one was obliged to introduce a quota system. In France, the debate which had been sparked off by the question of parity for men and women showed how complex that question was. Some had wanted to incorporate parity in the Constitution, while others had been fiercely opposed to it on the grounds that the introduction of quotas would constitute a violation of the principle of the equality of citizens.

47. In France, 57 per cent of judges were women, but only two women presided over courts of appeal. For that reason, as far as appointments were concerned, the Minister of Justice was in practice conducting a quota policy even if that term was not used.

48. Consequently, Mr. Bossuyt, who was a national of a country in which two communities cohabited, was in a very good position to study the question of affirmative action and quotas.

49. Mr. WEISSBRODT said that the debate prompted by his working paper on the rights of non-citizens (E/CN.4/Sub.2/1999/7 and Add.1) had been most informative. Some members of the Committee on the Elimination of Racial Discrimination had welcomed the joint efforts of the Sub-Commission and the Committee in that area. On the question of article 1, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination, he essentially agreed with the view expressed by Mrs. Warzazi. In that connection, it should be emphasized that that provision had less and less impact because of the interpretation placed upon it. It was to be hoped that that trend would continue since deletion of that paragraph, which Mrs. Warzazi seemed to be suggesting, would entail an amendment of the Convention, which was a fairly complex business.

50. It had been observed that the distinction drawn between citizens and non-citizens did not in itself constitute a form of racial discrimination, but non-citizens might still be subjected to discrimination.

51. He found very useful the idea that any study of discrimination against non-citizens must take account of four main factors: the different categories of non-nationals (e.g. permanent residents, temporary residents, undocumented aliens, etc.); the different categories of rights; the degree of development of the country concerned; and the reasons invoked for drawing distinctions between citizens and non-citizens. It was clearly apparent from the comments made that a much deeper review would have to be made of the jurisprudence of the European Court and the decisions of the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and other bodies.

52. The Sub-Commission's Special Rapporteur on the rights of non-citizens would have to take account of the work of the Commission's Special Rapporteur on the rights of migrants since the latter group constituted a very substantial category of non-citizens.

53. Much of document E/CN.4/Sub.2/1999/7/Add.1 was devoted to impediments to ratification of the Migrant Workers Convention. He did not necessarily endorse the arguments which were adduced by certain States to justify their reluctance to ratify the Convention and which he outlined in that document. Having said that, he shared Mrs. Warzazi's opinion that the study should also cover questions relating to ratification of the Convention.

54. In view of its importance, the question of trafficking in human beings would also have to be taken up in the study. The question of the Roma should be the subject of a separate study.

55. The CHAIRMAN declared closed the discussion on agenda item 3.

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS:

(a) THE INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS;

(b) THE REALIZATION OF THE RIGHT TO DEVELOPMENT;

(c) THE QUESTION OF TRANSNATIONAL CORPORATIONS;

(d) THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS

(agenda item 4) (E/CN.4/Sub.2/1999/10, 11, 12, 30 and 33; E CN.4/Sub.2/1999/NGO/5, 8 and 14; E/CN.4/Sub.2/1998/6; E/CN.4/1999/50)

56. Mr. MEHEDI, introducing his report on the realization of the right to education, including education in human rights (E/CN.4/Sub.2/1999/10), said that it related to a subject which the Sub-Commission had been the first to take up and which had already been the subject of a study the previous year. The present report was aimed at defining more precisely the content of the right to education, a right which was "transversal"; in other words, it must be considered simultaneously as a civil, political, economic, social and cultural right.

57. It was apparent from a reading of the principal international legal instruments that the prime aim of education was the development of the human person, but that development must be primarily based on the values which underlay human dignity, namely, freedom and responsibility. In other words, education must be oriented towards "responsible citizenship". It was because they had been closely aware of the fact that totalitarian systems had used education to perpetuate a "single way of thinking" that the drafters of the international legal instruments had placed education at the service of the development of the human person and established that responsibility for such education lay exclusively with parents.

58. The recognized priority of personal aims in no way detracted from the importance of the social aims, since the human person could fully develop only in a relational environment steeped in the values that underlay human rights.

59. The following basic guidelines could be formulated in that connection: access to education must be ensured without any form of discrimination; a minimum level of education must be guaranteed, below which the individual could not enjoy his fundamental freedoms; education must be differentiated, which meant that cultural and social differences must be taken into account; and lastly, the person educated - whether a child or adult - must have a right of participation, in other words, he must be regarded as a protagonist.

60. On the question of free education, all costs entailed by enrolling a child in school must be covered, since they could constitute a genuine obstacle to education and, hence, de facto discrimination.

61. As to the compulsory nature of education, it had finally been understood that the term "compulsory" associated with the word "education" in fact meant protection of the rights of the child by making education a duty towards the child for both the State and for the family. That obligation was, in fact, not incompatible with freedom of choice since the State did not have a monopoly on education and article 13 of the International Covenant on Economic, Social and Cultural Rights, among other provisions, recognized the right to found and direct educational establishments.

62. The scope of the right to education fell within three concentric circles: the first circle was that of the individual, the person receiving education; the second circle corresponded to the local community within which the person was called upon to play an active and creative role; and the third circle was that of the human community as a whole. Those apparently simple principles in fact required of the protagonists of education that they enter upon innovative paths, either in order to introduce universal concepts into a too individualist approach to education, or to redirect excessively ideological education towards the individual and his irreducibility to any utilitarian definition.

63. Mr. OLOWU ONYANGO introduced document E/CN.4/Sub.2/1999/11, which he had written jointly with Ms. Deepika Udagama. The fundamental idea behind the study was that current international practices in the commercial, financial and investment fields, far from having only beneficial effects, according to an increasingly widespread belief, resulted in job losses, destruction of the environment and intolerable levels of exploitation. In other words, the world market was hardly characterized by equality, non-discrimination and sustainable human development. The collapse of the "Asian tigers" had shown dramatically that, in the absence of any control, market forces could have devastating consequences in economic and social terms.

64. In their study, Ms. Udagama and he recalled that the main objective of international commercial, financial and investment practices must be to promote and protect human rights and sustainable human development. In that context, it was necessary to ensure that the major multilateral institutions, namely WTO, IMF, the World Bank, WIPO and OECD, became more aware of their obligations under the international human rights instruments.

65. The unsuccessful plan to establish a Multilateral Agreement on Investment (MAI) had confirmed the worst fears aroused by globalization in that MAI represented the total negation of all the fundamental principles relating to human rights. Any multilateral regime must first and foremost be genuinely multilateral, and must also take into account the fundamental rights and interests of countries and communities, and not only those of investors.

66. Ms. UDAGAMA recalled that over the years the Sub-Commission had focused on issues relating to economic, social and cultural rights in exemplary fashion, reaffirming the fundamental principle of the indivisibility of human rights. In that context, the working paper submitted for the attention of the Sub-Commission was particularly timely.

67. The liberalization of international trade, investment and finance regimes, which had become the sacrosanct ideology of the multilateral

institutions, had serious consequences in the area of human rights. The most pernicious manifestation of that new ideology, which took the form of multilateral or bilateral investment and trade agreements, was the blatant exploitation of developing countries. Admittedly, the MAI had been shelved for the moment in the face of opposition mainly from NGOs, but there was a danger that other agreements of that kind might reappear under the auspices of other institutions such as WTO.

68. The biggest challenge facing international human rights bodies was to formulate a regulatory framework which the multilateral institutions should abide by when formulating policy. Currently, those institutions, notably the World Bank and IMF, subordinated the international human rights regime to their own charters. For those institutions, taking account of human rights was almost tantamount to making a concession, which was totally unacceptable, both legally and morally. It was intolerable that globalization and its consequences should have the effect of violating the basic tenets of international law laid down in the Charter of the United Nations.

69. There was no question of returning to protectionism or State-controlled economies. What was needed was to ensure that international economic activities took place within a solid human rights framework. But in order to construct such a framework, it was important to examine further and more fully the impact on human rights of international trade, investment and financial policies. Such a study could be incorporated into a larger study on globalization, as had been suggested by the Commission on Human Rights. It would add to the work done by the Commission and the Sub-Commission on questions such as the implications of structural adjustment programmes and the activities of transnational corporations. Such an initiative should above all lead to the formulation of regulatory frameworks and the establishment of supervisory bodies so that international economic activity would have human development as the ultimate goal.

70. Mr. GUISSÉ recalled that, the previous year, when he had submitted his paper on transnational corporations (E/CN.4/Sub.2/1998/6), he had proposed that the Sub-Commission should establish a sessional working group to study that question. The Sub-Commission having accepted that proposal, the working group had been set up and had met on 3, 6 and 10 August 1999 under his chairmanship. It had been composed of five members representing the five major regions of the world; they had been spontaneously joined by other members of the Sub-Commission and NGOs, who had made a very useful contribution to its work. Among the latter, he referred to the American Association of Jurists, Pax Romana, Habitat International, the International Confederation of Free Trade Unions and the Centre Europe - tiers monde.

71. On the initiative of the members, the working group's agenda had been expanded in order to cover the whole question of transnational corporations, including the draft code of conduct for transnationals which Mr. Weissbrodt would present at the Sub-Commission's next session. For his part, Mr. Eide intended to make a compilation of existing instruments on the question; that compilation would also be introduced at the following session. His own objective was to establish a draft mechanism for implementation of the decisions that would be taken in the context of human rights and transnational corporations.

72. In the report he had prepared (E/CN.4/Sub.2/1999/9), the working group had made a number of recommendations to the institutions associated with the United Nations system. He stressed the fact that that work could not be done in a confrontational manner but required a consensus among States, transnational corporations, the international community and civil society. The aim was not to set the various parties against one another, but rather to devise a framework in which all could collaborate in the formulation of standards intended to regulate the activities of transnational corporations. The aim was also to give those parties a sense of responsibility concerning the application of those standards.

73. Mr. ZHONG said that human rights had never been universal - in times of slavery, in feudal times or during the colonial era. However, after the Second World War and the defeat of the Axis Powers, the universality of human rights had clearly made progress. Thus, the Charter of the United Nations and the Universal Declaration of Human Rights enunciated solemn principles in that area. Another factor for progress had been the accession to independence of a large number of developing countries, countries which had a common history and shared the same aspirations. In the United Nations and other international bodies, those countries had made common cause in support of peace and global development, notably by encouraging the establishment of a new international economic order. Similarly, they had contributed to the formulation and adoption by the United Nations General Assembly of a large number of international human rights instruments, and more particularly to recognition of the right to development as a key element in the universality of human rights.

74. Unfortunately, the efforts of the developing countries to improve the lot of their peoples were being severely jeopardized by the existence of an unjust and inequitable international economic order, which was reflected in the burden of debt service, international financial speculation, the monopoly on patents, etc.

75. In that respect, it must be emphasized that injustice throughout the world had worsened: thus, the developing countries, which embodied 79 per cent of the world's population, accounted for only 20 per cent of global GDP; in addition, 90 per cent of the world's poor (1.5 billion people) lived in developing countries. In that context, he recalled that the realization of the right to development required not only efforts by the developing countries, but also a favourable international climate, from which all nations would benefit. Without the right to development, the major principles enunciated in the Universal Declaration of Human Rights would remain a dead letter.

76. Mr. GLAVICH (American Association of Jurists) said that his organization had submitted three documents on the realization of economic, social and cultural rights. The first stressed the fact that human rights education must not be limited to informing, but must also help to train, in other words, to develop a critical spirit in individuals. The second document listed the impediments to realization of the right to development in Africa, which was a victim not only of the declining prices of its main exports on international markets, but also of neo-liberal and neo-colonial policies.

77. The third document concerned the international monetary system. It contained an analysis of speculative movements of international capital, estimated at $1.5 billion a day. The predominance of essentially American speculative financial capital largely accounted for the gap which existed between the huge fortunes of a minority and the growing poverty, not to say abject poverty, of a large portion of mankind. It was in that context of financial dictatorship that the policies of the principal transnational enterprises must be placed. They obeyed three related imperatives: maximize profits, ensure a high level of profitability of capital, and achieve the highest possible level of competitiveness.

78. Only the end of the dictatorship of capital and the restoration of the primacy of political considerations, in other words, the democratic participation of citizens in the management of the economy, could lead to genuine human development.

79. Mr. PORRET (Association of World Citizens) said that, since the fall of Communism, ultra-liberalism had grown enormously. The Bretton Woods institutions, which had been set up to aid reconstruction, no longer played the beneficial role which had been assigned to them, but helped to impose a single authoritarian development model. WTO, in particular, was an instrument in that policy. In addition, mergers of companies and banks had taken place with scant respect for workers' rights.

80. However, certain more balanced trends were emerging. Thus, the World Bank seemed to be changing its attitude towards indigenous populations. At the same time, his organization welcomed the work undertaken within the context of the Commission on Human Rights and the Sub-Commission on questions relating to economic and social rights linked to globalization.

81. Ms. TANAKA (International Movement against All Forms of Discrimination and Racism) said that her organization had actively helped to promote the Plan of Action for the United Nations Decade for Human Rights Education (1995-2004). Thus, the Movement's Japanese committee had co-sponsored a three-day conference on the subject, at which the participants, from 13 countries, had agreed that Governments should provide human rights training to military and paramilitary forces, security forces and prison personnel.

82. In order to promote human rights education, her organization would like to make the following recommendations: the United Nations bodies should pay increased attention to the Decade for Human Rights Education; the Office of the High Commissioner for Human Rights should create a special page on its Website to promote the Decade; countries which had not yet designated a coordination officer responsible for promoting human rights education should collaborate with NGOs for that purpose; the Office of the High Commissioner should compile and disseminate information on good practices of private companies in that area.

The meeting rose at 6 p.m.

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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 12th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 12 August 1999, at 10 a.m.

Chairman: Mr. HATANO

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The meeting was called to order at 10 a.m.

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS:

(a) THE INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS;

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(agenda item 4) (continued) (E/CN.4/Sub.2/1999/10-12, 30 and 33; E/CN.4/Sub.2/1999/NGO/5, 8, 14 and 25; E/CN.4/Sub.2/1998/6; E/CN.4/1999/50)

1. Ms. BIRO (Minority Rights Group) said that the main challenge facing minorities was the subordination of human rights to the imperatives of economic development. An international seminar hosted by her organization in 1995 had concluded that minorities were often excluded from the development process and that development programmes were sometimes even detrimental to their interests. An international workshop on the question, convened by her organization at Katmandu, Nepal, in April 1999, had broadly endorsed that conclusion, finding also that, as conventionally practised, development sometimes violated international human rights standards by disregarding key principles of the Declaration on the Right to Development.

2. Increased competition for scarce economic resources among ethnic, linguistic and socio-economic groups provided an opportunity for power-sharing, equal opportunities policies and affirmative action; instead, however, States' response to such competition often took the form of repression. The continued exclusion of minorities from the benefits of development would result in serious social tensions. Her organization had thus launched a programme to address some of the gaps identified, involving studies at the minority, national and international levels.

3. The Organization for Economic Cooperation and Development (OECD) and the World Bank emphasized development as a partnership involving interdependent macroeconomic, social and human aspects. Her organization thus recommended that the Sub-Commission should support the inclusion of minority rights in the agencies' procedures to assist implementation and monitoring; should encourage development actors to consider the needs and concerns of minority communities; should propose that organizations of the United Nations system ensure that minority communities were able to enter into peaceful dialogue in national and international forums; and should remind those organizations of their obligation to contribute to the full realization of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

4. Ms. PETROULA (International Federation of Human Rights Leagues) said that economic, social and cultural rights had long been accorded lesser importance than civil and political rights as a result, in particular, of the

rise of a neo-liberal free-market economic ideology that minimized the role of the State in securing social justice. The debate on the social clause in the World Trade Organization (WTO) provided an ample illustration of that trend. States had used the pretext of an over-literal interpretation of article 2 of the International Covenant on Economic, Social and Cultural Rights to justify their inaction in that area. The primary responsibility for ensuring the realization of all human rights very definitely lay with States and the findings of the Committee on Economic, Social and Cultural Rights had established that scarcity of resources did not exonerate States from certain minimum obligations. Progressive achievement of the realization of the rights in question must take the form of a steady improvement in their content.

5. The Sub-Commission was the United Nations body best fitted to accord prominence to economic, social and cultural rights. Her organization thus welcomed the setting up of a sessional working group to examine the working methods and activities of transnational corporations. Such corporations had benefited substantially from a new world order in which States had lost much of their decision-making power, particularly in economic matters, and were often powerful in political as well as economic matters. The situation was particularly serious where transnational corporations propped up dictatorships, as in the case of the Total Oil Company in Myanmar. The growing political role of those corporations was of particular significance in that they were almost completely unaccountable for their actions.

6. Her organization, which welcomed the proposal to set up a social forum within the Sub-Commission, urged the Sub-Commission to encourage the Commission to set up other mechanisms to monitor economic, social and cultural rights, such as the right to food and the right to adequate housing.

7. Ms. CUEVAS (Centre of Economic and Social Studies of the Third World) said that, owing to inadequate educational opportunities, the indigenous people of Mexico were unable to take full responsibility for their own affairs. Education was the best means of ensuring the preservation of such people's identity; and the Constitution of Mexico guaranteed all its citizens an intercultural education promoting full respect for ethnic diversity. For most indigenous Mexicans, however, the right was just a remote aspiration. Her organization thus called upon the United Nations to provide financial support for a new indigenous educational initiative, using indigenous knowledge and experience, designed to improve the social situation of the indigenous communities. Such a programme was needed to ensure that indigenous people became participants in, rather than observers of, the benefits of progress.

8. Mr. NAWAZ KHAN (Interfaith International) said that 2 million people in the Gilgit-Baltistan region of Kashmir were denied the right to development by Pakistan, the occupying Power, which was plundering its rich natural and mineral resources. The local inhabitants were deprived of a share in the spoils, and were even excluded from the labour market. As a result of deliberate government policy, the region had neither a university nor any institute of higher education.

9. In neighbouring Azad (Free) Kashmir, economically active young people were emigrating en masse to escape the oppressive influence of Pakistan. In

Indian-occupied Kashmir, too, the people were denied the right to development on the grounds that security was threatened. Kashmiris from both occupied areas needed international support in their struggle for self-determination, which would enable them to exercise the right to development enjoyed by people in the free world.

10. Mr. EIDE, introducing his updated study on the right to food (E/CN.4/Sub.2/1999/12), said that the widespread failure by States and the international community to ensure freedom from hunger and the right to food constituted one of the most serious shortcomings of the human rights agenda. Everyone agreed that freedom from hunger was a fundamental, indeed the most basic, human right. Yet more than 2 billion people the world over suffered from anaemia and iron deficiency, more than 900 million suffered from goitre, 16 million were severely retarded, and another 50 million suffered from other forms of brain damage resulting from iodine deficiency.

11. The good news was that something could be done to rectify that situation. The problem was not insufficient global and national food production, but the lack of access to adequate food by large numbers of people.

12. The Commission on the Nutrition Challenges for the Twenty-first Century of the Administrative Committee on Coordination Subcommittee on Nutrition (ACC/SCN) had highlighted the pernicious impact of malnutrition on the whole life cycle of the human being. Prenatal malnutrition could render human beings susceptible to disease later in life, and jeopardized the future development of both body and brain. Equality for women was not only an important human rights principle, it was also necessary to end the spiral of poverty, lethargy and missed opportunities. Malnutrition was very expensive for society. In that connection, the State had an obligation to respect, protect and facilitate women's right to breastfeed their children, and must put in place the necessary legislative and supportive measures to that end.

13. The right to food was at long last being taken seriously. A major breakthrough in that regard had come at the 1996 World Food Summit. At the instigation of, inter alia, the Sub-Commission, the Heads of State and Government had called upon the High Commissioner for Human Rights to define more precisely the rights relating to food set forth in article 11 of the International Covenant on Economic, Social and Cultural Rights, and propose ways of implementing and realizing them. Recent follow-up activities included the drafting of a code of conduct on the human right to adequate food, endorsed by more than 800 non-governmental organizations (NGOs), and the convening by ACC/SCN, in April 1999, of a symposium on the substance and politics of a human rights approach to food and nutrition policies and programmes. Moreover, the Committee on Economic, Social and Cultural Rights had in May 1999 adopted its General Comment 12, on the right to adequate food - a document of crucial importance.

14. Every country should develop a national strategy to implement the right to food. Two such strategies, prepared by Brazil and South Africa respectively, were considered in his updated report. The first step in national strategies should be to identify those vulnerable to food insecurity and to develop appropriate responses. The Food Insecurity and Vulnerability

Information and Mapping System (FIVIMS), currently being developed by the Food and Agriculture Organization of the United Nations (FAO) and other agencies and national committees, would be an essential tool in that regard.

15. There were three major points that emerged from his updated study. First, there was henceforth a much better and more widely shared understanding of the impact of hunger and malnutrition. Secondly, there was a much broader recognition of the right to be free from hunger and the right to adequate food as human rights. Thirdly, international institutions had broadly endorsed the human rights approach to food and nutrition issues and had pledged themselves to act, separately and collectively, to contribute to the realization of those rights. It remained to be seen, of course, whether States would take all possible steps to put an end to hunger and move towards a full realization of the right to food; and also whether the international community was prepared to shoulder its moral obligations in that regard.

16. He recommended that States should elaborate strategies for everyone within their territories to be free from hunger and to enjoy the right to adequate food; should at all times abstain from using food as a weapon and should ensure that international sanctions did not lead to populations being deprived of food. They should also consider developing further guidelines similar to the Draft International Code of Conduct prepared by the NGOs.

17. The High Commissioner for Human Rights should organize a broad consultation to draw up a coherent United Nations strategy; organize a special consultation involving treaty bodies, specialized agencies, programmes and funds, and humanitarian organizations, together with international financial and trade institutions, to enhance dialogue and encourage consultations on a regular basis and prevent activities which would cause a further deterioration in the enjoyment of the right to food; and initiate activities to clarify the joint and separate responsibilities of States to cooperate in ensuring access to food for all in times of emergency, with special attention to situations of armed conflict. The Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child should explore ways and means of establishing cooperative links among themselves and with the specialized agencies, funds and programmes of the United Nations. NGOs should devote more attention to economic and social rights, including the rights to food and nutrition.

18. Mr. KHALIFA said that a reading of Mr. Oloka-Onyango's working paper on globalization in the context of increased incidence of racism, racial discrimination and xenophobia (E/CN.4/Sub.2/1999/8) had left him somewhat confused about the suggested nexus between globalization and racism: racism had been alive and well before globalization and would, no doubt, survive it, and he wondered whether the exercise of establishing the connection had been a somewhat pointless one. Although multifaceted, globalization had its roots in economics and should be studied in that context and thus, from the Sub-Commission's viewpoint, under agenda item 4.

19. Similarly, Mr. Weissbrodt's paper on the rights of non-citizens (E/CN.4/Sub.2/1999/7) should not have been considered under agenda item 3 since the rights of non-citizens had not necessarily anything to do with race. The issue really belonged to the realm of private international law. However,

unless the topic were to be passed to the International Law Commission, Mr. Weissbrodt should continue his work. Mr. Mehedi's working paper on the content of the right to education (E/CN.4/Sub.2/1999/10) demonstrated an impressive familiarity with the work of the United Nations Educational, Scientific and Cultural Organization (UNESCO) but it would be helpful if future editions placed greater emphasis on human rights education, particularly increasing human rights awareness among young people. As for Mr. Eide's updated study on the right to food (E/CN.4/Sub.2/1999/12), he said that while food was, perhaps, the most basic of human rights, the pivotal issue was really the right to development.

20. In the aftermath of the cold war, the people of the United States felt understandably proud that their way of life had prevailed, but it was overdoing it to think that that way of life had become universally valid and should be adopted by the whole world. Democracy was incompatible with enforced conformity and no one should force nations to conform to a pattern. The attitude involved was not a matter of ideology but rather of economic interest. Few people had anything against the capitalist way of production, the free economy or the free market as such, but only against the capitalist virtue of "incentive" turning into greed and a lust for profit at all costs. Economic aggression, armed with everything that warfare required, was being waged to pressurize others into accepting unfair rules of the game and even to intimidate allies with a view to acquiring a super-bargaining position. Meanwhile, the third world was reduced to being an open market for unhealthy consumerism. The General Agreement on Tariffs and Trade (GATT) had been conceived and imposed to promote the interests of the world's greatest trading powers and to establish the free-trade imperative among economies that were not comparable.

21. It had become fashionable to pursue what was called the "third way", whereby - its advocates claimed - enterprise and justice could live together. The "third way" looked like a far-off dream, however, to the underprivileged countries. In the first place, there was a widening gap between the world's rich and poor countries and, in any country with a free-market economy, the gap between rich and poor was also widening. Economic growth was of little help to the poor in countries where the distribution of wealth was highly unequal. Secondly, successful development needed to be run in an honest and accountable manner, and that was sadly lacking in third-world countries, where the protective power of democracy was not always available to support the burden and cost of viable economic transformation.

22. A free economy was closely linked with political freedom: economists maintained that developing a market culture could take an entire generation, but that was still easier to achieve than democracy, into which people had to grow. It was not simply a matter of providing the wonder drug of multiparty elections to countries with 98 per cent illiteracy and endemic health problems. That was merely a semblance of democracy; elections could easily be sidestepped. In the absence of genuine democracy providing adequate regulation and acting as a corrective, free-market economics bred massive inequality in terms of access to education, health care and employment opportunities. The resultant acute discrepancies in standards of living led to civil unrest and, as often as not, to even less democracy.

23. On top of the irony of capitalism developing the undeveloped, poor countries had not only their debts to cope with but also high levels of expenditure on defence, which could have been directed towards more productive activities. The suppliers of defence equipment were Governments wishing to improve their balance of payments and private companies that cared only for the bottom line. Encouraging the people of developing countries to kill one another was good for business.

24. Broad-based unilateral sanctions on trade and investment had been imposed on some countries such as the Islamic Republic of Iran, the Libyan Arab Jamahiriya, Myanmar and Cuba, but those affected most were ordinary citizens not the leaders of the countries targeted, who managed to blame their own failures on Washington. It would be a moment for great rejoicing in the human rights community if the economic superstars were to fulfil their human responsibility towards the rest of the world.

25. Mr. GUISSÉ said that the economic inequalities between rich and poor countries and the intolerable misery that resulted were the cause of increasingly serious and frequent tension and conflict in the world. The economic domination by certain Powers constituted an obstacle to the establishment of a satisfactory international economic environment, which the international community and individual States had a clear responsibility to create. The richest 20 per cent of the world's population was becoming still richer and the poorest 20 per cent even poorer. Increasing poverty was caused by new production techniques that led to unemployment, worsening conditions of work, lower real wages, reduced social security benefits and more work-related accidents. The situation was particularly dramatic in Africa, where many generations had never enjoyed any material and moral well-being.

26. The conflicts of the past decade had demonstrated the unequal treatment reserved for those of the West and those of the third world. A Kosovar refugee cost $1.23 a day, whereas an African refugee cost $0.11. The United Nations no longer held out any hope for the peoples and countries of the developing world. The use by the United Nations of air strikes and embargoes had revealed the Organization's weaknesses when it came to the peaceful settlement of conflicts. The embargo imposed on the Iraqi people continued to cost thousands of lives, especially amongst children, and it was to be hoped that the sanctions against and bombing of that country and its people would soon come to an end.

27. There was also concern about globalization, which was a method by which a group of individuals and States were managing to capture the world economy. Globalization was bringing more misery and poverty, and the activities of some transnational companies were having negative effects on the economies of developing countries which found themselves obliged to play host to them.

28. Mr. BENGOA said there were two common themes running through the various working papers - namely the interrelationship and interdependence of human rights that had to be unified vis-à-vis an increasingly autonomous market, and the need to adopt specific measures on behalf of economic, cultural and social rights. In connection with Mr. Mehedi's working paper on the content of the right to education (E/CN.4/Sub.2/1999/10), one of the fundamental questions to be answered was how education was to be squared with its need to relate to the

market. In his view, that was a matter of freedom of education, but it should not be forgotten that the distribution of knowledge was even less equal - both nationally and internationally - than the distribution of income. As for Mr. Eide's updated study on the right to food (E/CN.4/Sub.2/1999/12), it was clear that, in the final analysis, it was the market that set the level of nutrition and a population's access to food. All in all, the very important question which needed to be discussed was the point at which a State should intervene to remedy the market.

29. In connection with the proposed social forum, he said that there were a number of points that the Sub-Commission should discuss under agenda item 4. The first was the excellent agenda proposed in Commission resolution 1999/53. There was also the question of who might be invited to take part; there would be the members of the Sub-Commission, of course, government observers, intergovernmental organizations and NGOs, but also, perhaps, international cooperation agencies, financial institutions, transnational corporations and other private international enterprises, and international trade union bodies, all of which would need to have the appropriate status with the United Nations to enable them to address the social forum.

30. As for the duration of the forum, he would suggest three days - scheduled in advance - during the session of the Sub-Commission. It could be presided over either by the Chairman of the Sub-Commission or by someone elected by its members. Its first session could be in 2000, and it might be advisable to request the Office of the High Commissioner for Human Rights (OHCHR) to draw up a report which would include recent documents and studies on economic, social and cultural rights.

31. Ms. PAK Kum-sok (International Association of Democratic Lawyers) said that, as a result of Japan's past colonial policy, many Koreans had been forced to reside in Japan against their will. They had founded over 100 schools throughout Japan in the hope of enabling their children to retain their cultural and ethnic identity. Unfortunately, the Government of Japan had maintained a discriminatory policy against those schools. It limited full financial support to those educated in Japanese schools, thus threatening the right of ethnic minorities to maintain their culture in violation of article 27 (d) of the International Covenant on Civil and Political Rights, and article 2 of the Convention on the Rights of the Child.

32. That situation had drawn criticism from the Committee on the Rights of the Child, which had recommended that the discriminatory treatment of children belonging to minority groups should be fully investigated (CRC/C/15/Add.90), and from the Human Rights Committee, which had expressed concern about instances of discrimination against the Korean minority in Japan, including the non-recognition of Korean schools (CCPR/C/79/Add.102). The fact was that, although a considerable number of private universities and universities run by local self-governing bodies in Japan did not discriminate against Korean and other foreign schools, State universities had initially refused to accept the qualifications of the pupils of those schools to sit entrance examinations and, although that barrier had subsequently been removed, students from foreign schools were still required to take a preliminary test before being allowed to sit the entrance examinations.

33. Furthermore government grants to Korean schools were far lower than those to Japanese schools and that imposed a heavy burden on the parents of Korean pupils, who were sometimes obliged to send their children to Japanese schools for financial reasons. She requested the Sub-Commission to recommend further improvements in the education policy of the Japanese Government as far as racial minorities were concerned, and suggested that a special rapporteur should be appointed to conduct an immediate investigation into the situation she had described.

34. Mrs. SRIVASTAVA (International Institute for Non-Aligned Studies) said that the right to development presupposed equal opportunities to participate in political, social, economic and cultural life and, particularly in multi-religious and multi-ethnic societies, it necessitated institutional safeguards against discrimination. Development had perforce to be tailored to the particular characteristics of each society, and ancient societies needed longer to adapt to the demands of the development process. There was an unfortunate tendency to link development assistance to ideological requirements. Although changes in behavioural patterns were necessary to sustain development, it had to be an evolutionary process, not a coercive one.

35. Regional cooperation was perhaps the best path to sustained development because it was facilitated by affinities of culture. Many newly independent nations looked beyond tangible development to development of the spirit, and it was not surprising that they often opted for a pluralistic democracy. Unfortunately, democracy was threatened by war and terrorism fed by bigotry, as the examples of Afghanistan, Yugoslavia, and Jammu and Kashmir demonstrated. If development were to be sustained, democracy had to be protected, and the international community must adopt a global plan to ensure that progress was not disrupted by the excesses of fundamentalism and terrorism.

36. Mr. KOHLI (Indian Council of Education) said that the record of expanding educational opportunities in the twentieth century was a source of both pride and shame. In spite of a fourfold increase in enrolments in primary and secondary schools over the last 40 years, there were still 885 million adult illiterates, 130 million children had no access to primary education and another 100 million did not complete even the first four years of schooling. Moreover, the gender gap, although narrowing, was still shockingly wide although women's literacy was the key to the better health, nutrition and education of the family.

37. Bridging the alarming gap between the developed and developing world was another basic challenge to education in the twenty-first century. To meet that challenge, the United Nations should, through its agencies, launch a technical mission to take advantage of the momentous scientific and pedagogic changes, to facilitate the acquisition of literacy and to provide incentives to educational institutions to eradicate illiteracy through area-specific and population-specific strategies.

38. Not only must elementary education be free and compulsory, it should also be directed to the full development of the human personality and the strengthening of respect for human rights. A particular cause of concern was that very few States in the South Asia region had adopted national plans in

conformity with the Plan of Action for the United Nations Decade for Human Rights Education, and that no formal regional mechanism had been set up to address human rights issues.

39. Mr. BILGRAMI (Afro-Asian People's Solidarity Organization) said that, while civil and political rights were more readily measurable than social and cultural rights, it had been universally recognized that poverty could lead to social unrest and eventually to a humanitarian crisis. Economic and social development and the achievement of civil and political rights must thus be seen as two aspects of an indivisible process. That interdependence had been confirmed in the Vienna Declaration and Programme of Action. The guarantee of human rights was only possible in the context of sustainable development, which was non-exploitative of both people and the environment.

40. Distributive justice was, in particular, denied to women, children and economically disadvantaged and marginalized sections of communities, which together constituted a majority of the world's population. It was one of the paradoxes of the contemporary world that, while electronic superhighways were being constructed, people in undeveloped countries, particularly women, had to travel long distances to seek water, fodder for their animals and fuel to cook their food. It was only natural, therefore, that developing societies should be more concerned about development than about the acquisition and protection of human rights.

41. As far as action by the international community was concerned, he suggested that the least developed countries (LDCs) be given priority in the realization of the right to development; that the ratification of human rights conventions, particularly those relating to social and economic rights, should be accelerated; that the contradiction between the slowness of that process and the promptness with which economic and military sanctions were imposed against violations of human rights should be resolved; that the possibility should always be considered that violations of human rights in developing countries might be a result of underdevelopment rather than discriminatory practices; that inconsistencies in the application of such sanctions weakened the credibility of the promotion and protection of human rights; and that selective morality threatened the integrity of human rights.

42. Mr. PARK Sang-yong said he welcomed the growing recognition of the importance of the right to development, which was reflected in a number of resolutions adopted by United Nations bodies. In its resolution 53/155, the General Assembly had expressed concern that the unacceptable situation of absolute poverty, hunger, disease, lack of adequate shelter, illiteracy and hopelessness had remained the lot of more than 1 billion people, and that more than 10 years after the adoption of the Declaration on the Right to Development obstacles to the realization of that right still persisted at both the national and international levels. It had also welcomed the establishment of an open-ended working group of the Commission on Human Rights, and the appointment of an independent expert, and had pointed out that the fiftieth anniversary of the Universal Declaration of Human Rights was an appropriate occasion to place the right to development at the top of the global agenda.

43. The Commission had, in its resolution 1999/79, reiterated that concern with particular reference to the gap between developed and developing countries, which the World Bank had recently reported as having widened, in terms of difference of income between the top and bottom 20 per cent of the world's population, from 60 to 1 in 1993 to 74 to 1 in 1998. Likewise, the Nobel Economics Laureate, Mr. Amartya Sen, and the President of the World Bank had pointed out in a joint article that 1 billion people were living on less than two dollars a day, 1.3 billion did not have clean water, that 40,000 children died every day because of hunger and related diseases, and that 130 million children did not go to school. It had also been estimated that the assets of the three richest families in the world exceeded the combined gross national product (GNP) of the 43 least developed countries. Admirable studies had been carried out by Mr. Eide on the right to food and Mr. Salazar on the right to drinking water and sanitation and by Mr. Bengoa on income distribution and human rights.

44. One of the burdens hampering human development was indebtedness, which was diverting resources that were needed to alleviate poverty and improve health, education and nutrition. A recent suggestion for enhancing debt relief had been made by OXFAM International: that relief might be linked to a promise from the country concerned that the proceeds would be used to meet essential development needs. The importance of debt relief had also been recognized in the Commission's resolution 1999/22.

45. So grave was the growth of poverty in East Asia, that the Asian Development Bank was shifting its emphasis from economic growth to poverty reduction. Over the past 15 years, per capita income had declined in more than 100 countries, and official development assistance (ODA) was stagnating at its lowest level for more than 50 years. An independent expert had pointed out in his report (A/CN.4/1999/48) to the Commission that the lack of political will rather than of financial resources was the real obstacle to the eradication of poverty and, in its resolution 1999/26, the Commission had requested the High Commissioner for Human Rights to consider the feasibility of holding a workshop with a view to a possible draft declaration on human rights and extreme poverty. In his own view, the elaboration of a convention on the right to development, which the General Assembly in its resolution 53/155 had requested the Commission to consider, would greatly contribute to the alleviation of that problem, and he thought that the Sub-Commission might well initiate the drafting of such a convention at an early date.

46. Ms. HAMPSON said that the implication that the economic forces sweeping the world were as untamable as the winds and the waves was patently absurd. They were free to sweep the world only because of the lack of regulation. States that claimed the prerogatives of sovereign independence had corresponding responsibilities. Home States had to ensure that individuals and companies based in their jurisdiction did not cause harm to persons in other jurisdictions and to other States. Host States had to control the activities of both national and foreign companies and individuals in their own jurisdiction. The tendency in the human rights enforcement bodies to hold States responsible for securing the protection of human rights and not just for their own violations was one that should be encouraged.

47. Turning to the relationship between the problems posed by structural adjustment policies for human rights and the activities of transnational corporations, she said that Mr. Fantu Cheru, independent expert of the Commission on Human Rights on structural adjustment policies, had noted in his report to the Commission at its fifty-fifth session (E/CN.4/1999/50) that the role of the State had been significantly curtailed by the end of the second decade of adjustment; market forces were in control and African economies were wide open to external penetration. Structural adjustment policies had apparently not even achieved their economic goals; their effects included increased unemployment, a dramatic rise in the poverty rate, a fall in real wages, a decline in budgetary allocations to social services, a widening in income disparities and the undermining of local productive capacities. Whenever a State failed to honour its obligations under a human rights instrument because of the exigencies of intergovernmental organizations such as the International Monetary Fund (IMF) and the World Bank, the responsible treaty body should identify the culprit.

48. A category of transnational corporation omitted from the report of the sessional working group (E/CN.4/Sub.2/1999/9) was that of companies purporting to provide security services. She suggested that the acts of members of such companies should be imputable to their own home State and the home State of the company, save where the host State had assumed such responsibility under a bilateral agreement with the home State.

49. In the argument regarding economic rights, there was a danger of losing sight of what was at stake. Poverty led to crime and general unrest and often to open conflict, destroying not only lives and security but also such economic progress as had occurred. The Sub-Commission had been told to focus on the prevention of human rights violations. Understanding prevention meant understanding both cause and effect.

50. For example, certain Caribbean island States were being deprived of privileged access to European Union markets because their bananas cost more than those produced by United States industrial producers in Central America. If the islanders were unable to export bananas, they would have no option but to become involved in the narcotics trade. The United States would then have to pay more for coastguards, drug enforcement agency officials and policing, and the long-term costs (irrespective of the impact on the communities of the small islands in question) would exceed the contributions of the banana corporations to politicians and political parties. When a panel decided a dispute solely in terms of economic rules and in total disregard of the long-term economic and human costs of its decisions, she wondered whether such bodies lived on the same planet as the Secretary-General and the Sub-Commission.

51. Mr. SIK YUEN said that the members of the Sub-Commission had been unable to do justice to the studies prepared by their colleagues because of the need to digest masses of written material within a very short time. Such thought-provoking studies should be made available well in advance of the session so that the ensuing discussion could be more productive. He had listened with great interest to Mr. Khalifa who had left his listeners in no doubt about the intolerable discrepancy between nations in terms of their wealth. Ms. Hampson had eloquently depicted the plight of small island

nations dependent on banana cultivation that were to be deprived of their livelihood. Mr. Eide had produced an excellent report on the right to food and Mr. Oloka-Onyango's linkage between globalization and colonialism had provided food for thought. He complimented Mr. Mehedi on his working paper on the right to education and shared Mr. Bossuyt's view that there was a clear-cut distinction, in the context of affirmative action, between discrimination and differentiation. Lastly, he wished Mr. Bengoa every success in his preparatory work on the proposed social forum.

52. Mr. WEISSBRODT, commenting on Mr. Mehedi's working paper on the content of the right to education (E/CN.4/Sub.2/1999/10), cautioned against any overlapping with the mandate of the Commission's Special Rapporteur on education. Mr. Mehedi had referred to the General Comment on the right to education recently adopted by the Committee on Economic, Social and Cultural Rights. The Secretary-General's note (E/CN.4/Sub.2/1999/23) contained a reference to the debate and background papers associated with that General Comment.

53. The references in paragraph 18 of Mr. Mehedi's paper to two categories of educational philosophy were unnecessary. Moreover, specialists in the philosophy of Immanuel Kant would probably disagree with his interpretation of that philosopher's views.

54. The paper would benefit from a discussion of the obstacles to realization of the right to education, including those faced by women and girls. Examples of such obstacles were lack of access to technology, safety concerns in attending local schools, the phenomenon of street children, and schooling in times of armed conflict or in refugee camps or other displaced communities. The indicators on page 19 should include a reference to the obstacles. Some possible indicators of a community's openness to education were whether dissident views were permitted in the education system, whether teachers had been dismissed for unpopular beliefs, and whether demonstrations, newspapers and other evidence of free expression were permitted.

55. The reference to judicial decisions by the French and Spanish Courts (paras. 68-70) would, of course, benefit from a discussion of practice in other States.

56. He congratulated Mr. Oloka-Onyango and Ms. Udagama on their ground-breaking working paper on human rights as the primary objective of international trade, investment and finance policy and practice (E/CN.4/Sub.2/1999/11). Some portions of the paper were of relevance to the proceedings of the sessional working group on transnational corporations and the two projects should be closely coordinated.

57. He supported the idea of involving the human rights community in suggesting frameworks for the negotiation of multilateral investment instruments and the proposal to focus on balance and mutuality of benefit. The success of such ideas would depend on creating a dialogue between the human rights community and the international investment community. Some international investment institutions had recently begun to acknowledge human rights concerns; others had either remained silent or said one thing and done another. He supported the idea of identifying and engaging each constituency.

58. Turning to the report of the sessional working group on the working methods and activities of transnational corporations (E/CN.4/Sub.2/1999/9), he urged the working group to make full use of the limited time remaining of its three-year mandate to formulate concrete and meaningful conclusions and recommendations. Transnational corporations were rapidly expanding and increasing their power. There were credible reports that factory workers employed by such corporations were often paid less than the cost of three basic meals. The work of the sessional working group should be widely publicized and as many interested parties as possible encouraged to participate.

59. Mr. Eide had made a major contribution over the past decade to the debate on the right to food. The new developments summarized in his updated study on the subject (E/CN.4/Sub.2/1999/12), including the General Comment of the Committee on Economic, Social and Cultural Rights, were extremely important. Any future work in that area should address such issues as: States' obligations to ensure access to food for displaced persons and in times of emergency and armed conflict; freedom of choice and religious preferences in respect of food; right-to-food obligations of States that had not ratified the International Covenant on Economic, Social and Cultural Rights; and the obligations of non-State actors, particularly transnational corporations and opposition political groups. The right to food should not be held hostage to other business or political objectives. Some measurable indicators in that regard would be welcome.

60. Mr. PUNJABI (Himalayan Research and Cultural Foundation) said that the United Nations Institute for Disarmament Research (UNIDIR) had formulated the doctrine of "security for development" or "security first" in connection with the right to development. The question was whether any kind of development - economic, educational or social - could take place in a society that had been thrown into turmoil by violence. Many developing countries that were grappling with hunger, poverty and illiteracy were simultaneously embroiled in perpetual conflict.

61. In some cases, conflicts were deliberately fomented to block or reverse economic or social development. A recent example was the incursion by armed militants from Pakistan into Kargil in the Indian State of Jammu and Kashmir. The attack by so-called mujahidin had set the area back five decades in economic terms. All schools and hospitals and the economic infrastructure had been destroyed. About 30,000 people, mainly Shiite Muslims, had been displaced and prevented from carrying out seasonal agricultural work.

62. Where peace was under threat, the rights to food, shelter, education and development could not be enjoyed. The establishment of clusters of rights under international legal instruments was all very fine but they contributed little in practical terms towards attaining the objectives of the United Nations Decade for the Elimination of Poverty. The Sub-Commission, in cooperation with donor agencies, should identify countries that sponsored and supported violence and should censure them.

63. Ms. KHOURY (World Federation of Trade Unions) said that sustained social, political and economic development could take place only in an environment of peace and freedom. Countries with tremendous potential were

being thwarted in their quest for a better life by factors outside their control such as the violence born of obscurantism. For example, the structures for all-round development in the State of Jammu and Kashmir were constantly being jeopardized by terrorism and war emanating from Pakistan. Pakistan's denials of active support for the terrorist groups were negated by the evidence. The Pakistani and international media had given extensive coverage to the arming, funding and training of such groups for a jihad against India. Pakistan had recently tried to lure India into a war that would have destroyed the Indian polity and economy. The prosperous State of Punjab had also been targeted by terrorist groups from Pakistan for over a decade.

64. The developing countries were being forced to divert scarce resources from the development process to the realm of security. If the international community was serious about promoting the right to development, it must neutralize the threat posed by unbridled terrorism, starting with a condemnation of Pakistan for its support for terrorism and military adventurism.

65. Mrs. WARZAZI said she failed to see the relevance of the previous statement to the agenda item under consideration. Terrorism was to be discussed under item 12 of the Sub-Commission's agenda.

66. The CHAIRMAN appealed to all NGOs and observers to confine themselves to the subject under discussion. If they failed to do so, their speaking time might have to be reduced.

The meeting rose at 1.05 p.m.

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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 13th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 12 August 1999, at 3 p.m.

Chairman: Mr. HATANO

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(a) THE INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS;

(b) THE REALIZATION OF THE RIGHT TO DEVELOPMENT;

(c) THE QUESTION OF TRANSNATIONAL CORPORATIONS;

(d) THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS (continued)

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The meeting was called to order at 3 p.m.

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS:

(a) THE INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS;

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(agenda item 4) (continued) (E/CN.4/Sub.2/1999/10-12, 30 and 33; E/CN.4/Sub.2/1999/NGO/5, 8, 14 and 25; E/CN.4/Sub.2/1998/6; E/CN.4/1999/50)

1. Mr. SAUTTER (Pax Romana), speaking also on behalf of the International Federation of Rural Adult Catholic Movements, said that, in view of the negative impact of economic globalization, the Sub-Commission was expected, more than ever, to play a pivotal role in the formulation of a normative and regulatory human rights framework.

2. Pax Romana welcomed the decision by OECD to withdraw the Multilateral Agreement on Investment (MAI). However, that instrument, which was intended to be a charter of rights of corporations that would have restricted the ability of Governments to control them, was to be discussed again at the next Ministerial Conference of the World Trade Organization (WTO). Hence, the organizations defending human rights should remain vigilant. Pax Romana also denounced the speculative investment underlying the economic and financial crises from which tens of millions of persons had suffered in South-East Asia and Latin America. Unfortunately, the international community had been unable to find solutions to those crises and the human rights violations that they had entailed were continuing. For that reason, Pax Romana recommended that the Sub-Commission examine more thoroughly the negative impact of speculative investment on human rights and study the question of globalization and its impact on the full enjoyment of all human rights in conformity with resolution 1999/53 which the Commission on Human Rights had adopted under agenda item 4.

3. Noting that agro-chemical transnational corporations controlled the entire food production chain and the global food trade, Pax Romana supported the recommendations made by Mr. Eide in his report on the right to food (E/CN.4/Sub.2/1999/12). Those problems could also be examined within the framework of the Social Forum proposed by Mr. Bengoa. In Africa, the problem of external debt was also obstructing enjoyment of the right to food. Although the heads of State of the G7 countries meeting at Cologne in June 1999 had announced that 90 per cent of the debts of the poor countries would be cancelled, in actual fact, those cancellations represented only 1 per cent of total third world debt. Moreover, in order to benefit from those measures, the countries concerned would have to adhere to the structural adjustment programmes imposed by the IMF. It was therefore essential that, as recommended by Mr. Eide in paragraph 131 of his report, the creditor countries

should adopt substantial debt-relief measures in ways which facilitated realization of the right to development for vulnerable groups in developing countries.

4. Mr. PANDITA (African Commission of Health and Human Rights Promoters) said that there was a close link between disarmament and development. In that regard, he welcomed the fact that, in October 1998, 16 heads of State and Government of the Economic Community of West African States (ECOWAS) had adopted a declaration providing for the application of a moratorium on the import, export and manufacture of light weapons. In fact, unless the international community put an end to the large-scale trade in light arms, development in zones of conflict would remain illusory. That applied in particular to Asia and especially Afghanistan, where almost one third of the country's population had been decimated during a fratricidal war, and in the State of Jammu and Kashmir where 10 years of conflict had destroyed most of the infrastructure needed for development and had dealt a devastating blow to two sectors, handicrafts and tourism, which were the mainstay of the economy.

5. The African Commission of Health and Human Rights Promoters, believing that the international community had a moral responsibility in that regard, called upon the States concerned to follow the example of ECOWAS and sign a declaration providing for a moratorium on the import, export and manufacture of light weapons.

6. Mrs. BIONDI BIRD (International Confederation of Free Trade Unions - ICFTU) said that the prospects for world economic recovery remained very fragile and Governments and international financial institutions should reinforce the social dimension of the process of international market integration. While welcoming the fact that the World Bank and IMF had begun to review their approach to the governance of the international economic and financial system, ICFTU still regarded that step as too timid. In their negotiations with Governments, the Bretton Woods institutions should take into consideration the measures to be adopted to improve social protection, combat poverty, develop access to education, health care and employment and strengthen social institutions and industrial relations.

7. With regard to the work of the Sub-Commission, ICFTU commended the quality of the working paper presented by Mr. Oloka-Onyango and Mrs. Udgama (E/CN.4/Sub.2/1999/11) but regretted that no specific reference had been made to labour rights in the conclusions and recommendations.

8. ICFTU criticized the methods adopted by multinational corporations to procure cheap labour and quoted, by way of example, a dispute between a United States textile workers' union and retail companies from that country whose sub-contractors in Saipan, one of the Mariana Islands, were employing many workers from China, the Philippines, Bangladesh and Thailand who, having been lured by promises of a better life in the United States, were being made to work up to 12 hours a day, seven days a week. In that connection, it should be noted that the United States had ratified only one of the seven ILO core conventions on labour rights.

9. Mr. FERNANDEZ (International Organization for the Development of Freedom of Education), speaking also on behalf of New Humanity and the Association

pour le Volontariat Social International, welcomed the increasing interest that United Nations human rights bodies were showing in education and commended the innovative character of Mr. Mehedi's study on the content of that right (E/CN.4/Sub.2/1999/10). That interest was fully justified in view of the fundamental nature of the right to education, which some authors had designated as a "human rights instrument". Education formed the basis of sustainable human development and, from the cultural standpoint, was equivalent to the right to life: for peoples as well as individuals, it was a matter of life or death. When speaking of education, one could not refer only to public expenditure, the proportion of GNP devoted to educational programmes or the literacy rate; the qualitative as well as the quantitative aspects should be mentioned. Although indicators were certainly necessary, the quality of education also needed to be assessed. For example, UNESCO was stressing the need for "quality education for all", that is to say, above all, a meaningful education. That meaning should be not only pluralistic but also open to the universal. Education designed in that way was conducive to respect for cultural and religious identities. However, such education needed to be invented because the models that were still being followed were obsolete. For that reason, the Sub-Commission should adopt an innovative and creative approach to studies on the right to education by stressing its cultural nature.

10. Mrs. AVELLA (Women's International Democratic Federation) denounced the neoliberal policy that was responsible for the exploitation and marginalization of most peoples and the unequal distribution of wealth. The structural adjustment programmes imposed by the International Monetary Fund had led to a decline in the standard of living in the developing countries. In several Latin American countries, the economic recession was assuming the dimensions of a depression, which would only aggravate the situation of the poorest. By emphasizing privatization, most development plans were promoting corporate capitalism while leaving millions of persons unemployed. The opening of markets likewise entailed an increase in imports, from which transnational corporations benefited. On the other hand, labour market flexibility had nullified the acquired rights of workers.

11. That situation was causing a resurgence of violence, particularly against women, who were the principal victims of mass violations, crime and the lack of food and medicine. Women still constituted 70 per cent of the human beings suffering from hunger, poverty, unemployment and marginalization. In addition, transnational corporations were continuing to employ children, who were being treated as veritable slaves in some countries of South-East Asia.

12. Mr. BALTI (Association Tunisienne pour l'Auto-Développement et la Solidarité - ATLAS) said that globalization had not yet produced the expected positive effects and, on the contrary, the number of poor people was constantly increasing. The commendable efforts that regional and international organizations, the Office of the High Commissioner for Human Rights and the Sub-Commission had made to promote the right to development remained insufficient and the same applied to the support for NGO projects in developing countries aimed at ensuring the realization of economic, social and cultural rights, which should be viewed in the same light as civil and political rights to which they were inextricably linked.

13. The activities of ATLAS supplemented the national programmes to combat poverty which had been implemented in Tunisia for the last decade. Those programmes were currently based on the principle of integration through economic activity instead of a system of assistance. For example, the Tunisian Solidarity Bank had granted 10,000 loans to fund small projects of young entrepreneurs, one quarter of whom were women. The comprehensive developmental approach that had been adopted by ATLAS had produced tangible results as shown, inter alia, by the rise in educational enrolment, the improvement in life expectancy and the increase in per capita income.

14. Moreover, in response to a proposal made by President Ben Ali, the Tunisian Parliament had recently adopted a law under which the management of microcredit on simple and favourable conditions for the most disadvantaged sections of society would be entrusted to NGOs. International cooperation and solidarity nevertheless remained indispensable in order to tackle the problems of poverty and achieve the expected progress.

15. ATLAS recommended that the Sub-Commission should, at a subsequent session, take stock of the partnership relations between NGOs, on the one hand, and governments and international organizations on the other, in regard to the realization of economic, social and cultural rights and it supported Mr. Bengoa's proposal concerning the organization of a social forum.

16. Mr. PARY (Indian Movement Tupaj Amaru), speaking also on behalf of the North-South XXI organization, said that, in accordance with the logic of the new international economic order governed by the law of the jungle, transnational corporations were dominating the world economy. The 100 largest corporations were based in the most highly developed countries and were holding more than one third of the world's capital. They were omnipresent on the lands of indigenous populations, whose wealth they coveted. For example, in accordance with its ultra-liberal policy, the Russian Government was currently handing over to them the fabulous natural resources concealed in the subsoil of Siberia which belonged to the indigenous peoples of that immense territory.

17. Today, more than ever before, the absence of a legal framework governing the activities of transnational corporations and their direct investments in the third world was being grievously felt. In fact, they were interested solely in maximizing their profits by pillaging natural resources and exploiting labour. The States in which they operated had neither the negotiating power nor the legal tools needed to control them. Hence, there was an imperative need to define the rights and obligations of those corporations in order to formulate clear and precise rules concerning the responsibility of economic agents in fields such as pollution, extreme poverty and the illicit transfer of capital, which constituted grave violations of economic and social rights.

18. In 1992, at the request of the United States of America and under pressure from economic and financial circles, the governmental delegations had decided to abandon their consideration of a draft code of conduct for transnational corporations. Democracy had been replaced by dictatorship of the market economy. However, many texts stressed the need to establish a binding international legal framework for transnational corporations and

States. The Sub-Commission's sessional working group on the working methods and activities of transnational corporations could find a source of inspiration in the Charter of the United Nations, the International Covenants and various resolutions of the General Assembly in which the latter had laid down a number of rules concerning the provision of economic and technical assistance, foreign investments, the exploitation of natural resources, nationalization, expropriation and requisition.

19. Mr. AGUILAR (Service, Peace and Justice in Latin America), presenting himself as a member of the indigenous community of Mixtecos in the State of Oaxaca in Mexico, said that indigenous people were marginalized and living in poverty because their economic, social and cultural rights were being violated. In addition, States were endeavouring to impose on the indigenous population a mode of development that did not correspond to their culture and failed to respect nature.

20. In Mexico, more than three quarters of the indigenous population were living in extreme poverty, half were illiterate and four fifths of children were suffering from denutrition. The State was also denying the right of the indigenous population freely to dispose of their natural resources and their lands and was engaging in expropriations, as in the Papaloapan basin, and in massive deforestation. The indigenous peoples of other countries were experiencing the same fate and were likewise victims of the globalization of the neoliberal economy.

21. The indigenous peoples did not want a development and integration model that would imply relinquishment of their own identity. They wanted to be the subjects of their own development based on respect for their culture and for nature without thereby rejecting modern technology. The State's refusal to recognize collective rights of indigenous peoples, such as the right to self-determination within the framework of national legal systems and the right to ensure their economic, social and cultural development, could lead to acts of aggression by police or military forces as demonstrated by recent events in the State of Oaxaca.

22. On behalf of his organization, he called upon the Sub-Commission to undertake a full study of the rights of indigenous peoples and to ensure that those rights were respected. He also called upon the Government of Mexico to apply the San Andrés accords concerning indigenous rights and culture.

23. Mrs. MOURAVIEFF APOSTAL (International Federation of Social Workers) said that education was not only a right but also an imperative need on which the survival and development of populations depended. Realization of the right to education was particularly indispensable as technology was currently making rapid progress and the gulf was widening between populations endowed with knowledge and, consequently, resources and those who lacked training and were therefore condemned to a life of poverty and exploitation. That trend posed a serious threat to the survival of mankind as it was synonymous with poverty, unemployment, fanaticism and conflict. The right to education was still not being applied in some countries due to the lack of financial resources, the high birth rate and lack of familiarity with human rights. In that regard, the appointment last year by the Commission on Human Rights of a Special Rapporteur on the right to education should be welcomed.

24. As had been pointed out by UNESCO, education could be dispensed in various ways. It was therefore conceivable that a non-academic education could be provided for children and adults who, because of their financial situation, were unable to attend existing academic institutions. Those persons could be subsequently integrated in the normal teaching programme or obtain equivalent qualifications. It should be borne in mind that discrimination based on gender, social status, race or religion must be totally banished from the education sector. Although education was not a panacea for all ills, it was nevertheless one of the means available to ensure a little social justice.

25. Mrs. PARKER (International Educational Development) said that there was a direct interlinkage between the realization of economic, social and cultural rights and the imposition of economic sanctions and she pointed out that, in its resolution 1997/35, the Sub-Commission had expressed its concern at the adverse consequences of economic sanctions for the enjoyment of human rights. Moreover, the sanctions imposed within the context of an armed conflict should respect the fundamental principles of humanitarian law and should not affect the civilian population. Since the measures taken by the Security Council under Articles 41 and 42 of the Charter were supposed to be in conformity with the aims of the United Nations, they should be evaluated before being applied and, if necessary, should be modified if they were not in accordance with the provisions of the Charter or humanitarian standards. In that regard, note should be taken of the framework established by the Committee on Economic, Social and Cultural Rights in its General Comment No. 8 of December 1997 for the evaluation of sanctions in relation to economic rights.

26. In Burundi, although the sanctions had been suspended they could be reimposed at any time even though the Commission's Special Rapporteur on the human rights situation in Burundi was strongly opposed to those measures which "were having a disastrous effect on the general population of Burundi" (E/CN.4/1998/72). She called upon the Sub-Commission carefully to monitor developments in the situation and to request the application of appropriate measures to ensure the country's economic reconstruction.

27. The sanctions imposed on Iraq, on the other hand, had not yet been lifted and the situation in regard to the economic, social and cultural rights of the civilian population was catastrophic. More than one and a half million children had died and, as noted by UNICEF and WHO, famine was rampant. Agricultural production was far from sufficient and was contaminated by the depleted uranium used during the war. That had resulted in a whole series of diseases, as well as congenital malformations, which the United States of America was endeavouring to conceal from the world while insisting on the maintenance of the sanctions. Moreover, by 1996, epidemics that had previously been controllable had decimated the livestock and destroyed the harvests. However, the Sanctions Committee had prohibited importation of the products and vaccines needed to combat them.

28. Consequently, she called upon the Sub-Commission to request the lifting of the sanctions that were affecting the economic, social and cultural rights of the Iraqi civilian population and urged it to continue its consideration of that question.

29. Mr. WINDFUHR (Food First Information and Action Network) said that the study prepared in 1987 by Mr. Eide on the right to adequate food as a human right (E/CN.4/Sub.2/1987/23) had been highly important, in the view of the NGOs, for an understanding of that right. The Committee on Economic, Social and Cultural Rights had also incorporated many of the principles outlined in the 1987 study in its General Comment No. 12. The updated version of that study (E/CN.4/Sub.2/1999/12), which was also before the Sub-Commission, was likewise very useful.

30. The NGOs and States participating in the World Food Summit at Rome in November 1996 had called upon the High Commissioner for Human Rights, in collaboration with the competent treaty bodies, to provide a better definition of the right to adequate food, which had been done in General Comment No. 12, and to consider the drafting of supplementary instruments in order to fill the legal gaps and ensure more effective application of the right to adequate food. Some NGOs had also drawn up a code of conduct defining the obligations of States in that connection and specifying the responsibilities of the economic agents who could influence the realization of that right. In fact, the NGOs had noted that the external economic policy of a State could affect enjoyment of the right to adequate food by the citizens of another State. The structural adjustment and commercial policies imposed by intergovernmental and international institutions likewise influenced the ability of States to give effect to that right. As emphasized by Mr. Eide in his study, States also had an obligation to protect their citizens from the adverse effects of the activities of other economic agents, in the private sector for example. That was why the code of conduct drawn up by the NGOs sought to encourage States to apply one of the objectives of the World Food Summit, namely the preparation of directives for the private economic agents which had not hitherto been taken into account.

31. He requested the Sub-Commission to encourage FAO and the Office of the High Commissioner to convene a third seminar of experts from organizations operating in the fields of food and agriculture and from the Office of the High Commissioner for Human Rights in order to study the question of the practical application of General Comment No. 12 by States and means to fill the above-mentioned legal gaps.

32. Mrs. YULIA MOTOC said that, although civil and political rights and economic, social and cultural rights were fundamentally interlinked, that interlinkage had been called into question by the arbitrary separation between rights advocated by the liberal movement, in the case of the former, and rights associated with socialism, in the case of the latter. After the collapse of communism, some had predicted that economic, social and cultural rights would have no future, which was unjustified since, at all events, the States of the communist bloc had shown no greater respect for those rights than for civil and political rights. On the other hand, the prediction of those expecting the collapse of communism to give rise to the absolute and unbridled reign of market mechanisms, against which a State governed by the rule of law was powerless, had proved to be correct. Furthermore, poverty in those States had increased and had created fertile ground for the development of extremist ideologies as illustrated by the alliance between former

communist parties and the extreme right. In that connection, it would be useful for the Sub-Commission to examine the linkage between those alliances, which also existed in other countries, and racial discrimination.

33. It had become difficult to distinguish between the right and the left and it was no longer possible to designate a particular party as the promoter of anti-racism or of social, economic and cultural rights. The difference between rich and poor was more evident and that was why some writers affirmed that the promotion of anti-racism was a luxury that could be afforded only by the rich countries in which the parties of the right as well as those of the left could be seen to be combating extremism.

34. That lack of clearly defined ideology was accompanied by a loss of identity by the State which, according to some, was partly attributable to globalization. When the State began to lose its authority, citizens gave free rein to their aggressiveness and, in that sense, there was an evident correlation between globalization and racism. In view of that trend, while it was extremely important to promote education it was also necessary to apply other forms of sanctions against transnational corporations in order to induce them to respect human rights.

35. The concept of development aid had been modified in keeping with those changes. In the 1960s, aid was viewed as a debt due to the countries that had been colonized and exploited, but the end results of that type of aid based on the generosity of the rich States had been negative. At the present time, the basis of development aid was more realistic: reliance was placed on the egoism of the most highly developed countries, which had every reason to prevent poverty from spreading in the developing countries because such poverty could pose a threat to themselves in the near future.

36. Mr. KHOURI (Union of Arab Jurists) said that economic, social and cultural rights, which were an essential component of the International Bill of Human Rights, were being infringed by globalization, and the disparity between the developed and the developing countries was constantly increasing in the economic and technical spheres. The poorer countries were overburdened with debt and faced with the risk of conflicts. In many developing countries recognized social rights were being called into question, poverty was gaining ground and transnational corporations were indifferent to national interests.

37. On the threshold of the third millennium, peace, stability and economic development were still lacking in the Middle East. Israel was continuing its policy of aggression in Palestine, in the occupied Arab territories and in Lebanon and was refusing to recognize the Palestinian people's right to self-determination.

38. Moreover, the embargoes and sanctions ordered by the United States of America constituted a violation of the right to development. The embargo imposed on Iraq for the last 10 years had already resulted in more than one and a half million deaths, primarily among children under five years of age. Due to the lack of books and teaching materials, Iraqi youth was unable to exercise its fundamental right to education and the future of the country and of coming generations was thereby being compromised.

39. He proposed that the Sub-Commission should adopt a resolution calling for the lifting of the embargo that had been imposed on Iraq, as it was no longer morally or legally justifiable and was causing tremendous suffering to the civilian population.

40. Mr. SINGH (Liberation) said that, when non-governmental actors such as private corporations exercised de facto if not de jure control over factors impinging on the enjoyment of human rights, they should be held accountable for their activities in those fields, particularly when the State was not in control of the situation.

41. The United Nations should develop a mechanism to supervise the activities of transnational corporations, which must be held accountable for their acts having an adverse impact on the human rights situation, and should endeavour to solve the problems on a case-by-case basis. There were specific allegations to the effect that transnational corporations were sponsoring acts of violence, including extrajudicial executions, against indigenous peoples, in Colombia for example. It was important, therefore, that those corporations be held responsible. However, since they were sometimes more powerful than the State in which they operated, there was a need to draw up a set of international standards or even a convention to regulate their activities. The Sub-Commission should encourage studies on that subject.

42. With regard to the situation in north-eastern Sri Lanka, he called upon the Sub-Commission to make urgent representations to the Sri Lankan Government to permit the transport of food and medicine to the region of Vanni and other Tamil areas where the population was threatened with famine.

43. Liberation was also concerned at the arms race in which Pakistan and India were engaging to the detriment of the satisfaction of the fundamental needs of their population. Pakistan was allocating 22.5 per cent of its budget to defence but only 0.47 per cent to health and 0.14 per cent to education. Liberation was therefore urging the Indian and Pakistani Governments to reduce their defence budgets and put an end to their conflict in Kashmir so that more resources could be devoted to education and development. In that connection, it should be noted that the majority of the population of Manipur, Nagaland and Assam in India were boycotting the Independence Day celebrations in protest at the forceful exploitation of the natural resources of those regions, the population of which was thereby being deprived of the right to enjoy their own resources and their economic, social and cultural rights.

44. Mr. RAMISHVILI said that the right to education, including education in human rights, was one of the most important rights since its exercise would help the younger generation to fully enjoy their economic, social, cultural, civil and political rights. For its part, the Sub-Commission should contribute to the success of the United Nations Decade for Human Rights Education. To that end, Mr. Mehedi should continue his study on the right to education and supplement it with factual information on human rights education. The experience gained in that field by some countries, particularly countries in which several religions and ethnic groups coexisted, could serve as an example for other countries.

45. It would also be helpful if Mr. Mehedi could carry out a comparative analysis of educational standards in various countries, especially in regard to human rights education and the use of the handbook that the United Nations had prepared for the teaching of human rights.

46. Mr. QADRI (World Muslim Congress) pointed out that, in accordance with article 1 of the two International Covenants on Human Rights, all peoples had the right of self-determination and, by virtue of that right, were entitled freely to determine their political status and freely to pursue their economic, social and cultural development. In areas under foreign occupation, those rights were the first to be violated by the occupying Power.

47. In the absence of effective international solidarity to ensure the realization of economic, social and cultural rights, economic development was meaningless. Governments never lacked arguments to justify flagrant violations of freedom of expression, freedom of religion, freedom of association and property rights in the name of "national development".

48. The right to education was also a basic right and any attempt to prevent a community from exercising it was a criminal act. In Kashmir, for example, 262 of the 585 government schools were controlled by the Indian security forces and some had been used as interrogation centres in which people were tortured. The army was also destroying forests in order to construct military camps in all rural areas and was subjecting the local population to forced labour. The Indian Government's periodic announcement of its intention to implement plans for the development of the economic infrastructure and job creation in Kashmir was actually an attempt to divert attention and hide the underlying causes of the conflict.

49. Mr. AHSAN (World Federation of Democratic Youth) said that the full enjoyment of economic, social and cultural rights and the right to development was impossible in conditions of insecurity, oppression and discrimination, particularly when the State itself was responsible for that situation. For example, in the province of Sindh in Pakistan, 22 million Mohajirs, who constituted the country's largest ethno-linguistic minority, were being denied all their rights by the majority ethnic group (Punjabis) who held political and economic power. It was evident that development could be achieved only in a democratic, pluralistic, tolerant and just society in which the principle of the equality of all citizens before the law was actually applied. However, in Pakistan, the Mohajirs were being systematically and deliberately marginalized, becoming second-class citizens in their own country. During the last 10 years, the Pakistani army had twice been deployed in the province of Sindh where it had conducted operations against the civilian population, persecuting the Mohajirs in particular. Those military operations had been one of the principal causes of the lack of development in that region under all Governments, even those that had been democratically elected.

50. Consequently, the World Federation of Democratic Youth called upon the Sub-Commission to urge the Pakistani Government to put an end to its policy of discrimination and repression against the Mohajirs of Sindh and to establish a true democracy in which all members of Pakistani society would be able to enjoy the benefits of development.

51. Mr. PROVE (Lutheran World Federation) joined other speakers in welcoming the excellent working paper presented by Mr. Oloka-Onyango and Mrs. Udgama (E/CN.4/Sub.2/1999/11), which constituted a major contribution to the Sub-Commission's work on questions relating to economic globalization and transnational corporations. The Federation endorsed the authors' recommendation that the Sub-Commission conduct a more thorough study of the relationship between trade, investment and financial policy and practice and human rights within the wider context of its consideration of the impact of globalization on the full enjoyment of all human rights. However, it hoped that priority attention would nevertheless continue to be paid to the impact of economic globalization on the livelihood and rights of marginalized communities.

52. The Federation likewise endorsed the recommendation concerning the establishment of mechanisms to carry out appropriate human rights impact assessments of the effects of the implementation of policy decisions taken by multilateral intergovernmental organizations. In that regard, he drew the Sub-Commission's attention to the Ministerial Conference of WTO, which was scheduled to be held at Seattle, United States of America, at the end of the year and during which some member States intended to propose the launching of a new round of negotiations with a view to the adoption of further liberalization measures in the agricultural and services sectors, possibly also including health and educational services. Bearing in mind the recent global economic crises, the widening gap between rich and poor, the gradual disappearance of the middle class and civil society's increasing opposition to unregulated economic liberalization, it would be unwise to apply such measures without a prior analysis of the human rights impacts of the measures that had already been taken. Caution should be exercised in that regard and the Sub-Commission should issue an urgent warning to that effect in view of the eminence of that Conference.

53. In the course of its work on that question, the Sub-Commission should examine the manner in which human rights principles could be integrated into economic policy during the process of formulating and implementing that policy rather than exclusively or primarily through the imposition of negative conditions or sanctions, especially of a unilateral nature, which could undermine acceptance of the universality and indivisibility of human rights.

54. Mr. OZDEN (Centre Europe - tiers monde - CETIM) said that CETIM had repeatedly denounced the adverse effects of the external debt of the countries of the South on the enjoyment of economic, social and cultural rights. The announcement by the G7 countries, at their previous meeting, of the cancellation of 90 per cent of the debts of the poorest countries was merely a hoax since, in actual fact, those cancellations amounted to a maximum of 12 per cent, i.e. $25 billion, of the debts of the countries concerned and 1.2 per cent of the total debt of the third world. It was evident that some countries of the South, such as Mozambique, were so highly indebted that, in spite of the application of those so-called relief measures, they would continue to allocate almost half of their budget to debt servicing. Those measures were particularly insidious insofar as they were subject to the application of structural adjustment programmes imposed by the IMF and the World Bank which had a direct adverse impact on the enjoyment of economic, social and cultural rights by the population.

55. CETIM regretted that the Commission had not accepted the Sub-Commission's recommendation that it appoint a special rapporteur on the realization and promotion of the right to drinking water and sanitation. That decision was particularly surprising since, by the year 2025, about 3 billion individuals would be suffering from a shortage of drinking water and many conflicts that were currently raging throughout the world had been caused by a lack or shortage of water. It was also surprising that the Commission on Human Rights had requested the Sub-Commission to endeavour to formulate a more precise definition of that right to drinking water before conducting a study. In fact, that right could not be called into question because water, as a vital resource, contributed to the well-being of the individual and of the society in which he lived and, in addition, the water supply formed an integral part of the overall social and economic activities of the individual and communities. The General Assembly should therefore recognize the right to water as a fundamental right in the same way as the right to food or housing. The Sub-Commission should also, as a matter of priority, formulate suggestions and recommendations concerning urgent measures to be taken to prevent a water shortage.

56. With regard to the working paper (E/CN.4/Sub.2/1999/11) presented by Mrs. Udgama and Mr. Oloka-Onyango on human rights as the primary objective of international trade, investment and financial policy and practice, CETIM was in favour of an in-depth study being conducted on that question. In fact, it was particularly concerned at the increased liberalization of markets and investments which the States of the North were seeking to obtain by launching a new round, known as the millennium round, during the third Ministerial Conference of WTO to be held at Seattle in November 1999. Hence, there was every reason to expect the reappearance, in a similar form, of the MAI which, as emphasized by the two experts in their working document, "in form and in substance represented the ultimate negation of all the basic principles of fundamental international human rights".

57. Consequently, CETIM called upon the Sub-Commission to adopt a resolution on that question reminding multilateral institutions of their human rights obligations recognized in international law, requesting WTO to adopt a moratorium on the MAI negotiations until the Commission on Human Rights had endorsed the conclusions and recommendations of the study requested by the two experts, and calling upon the High Commissioner for Human Rights to transmit the resolution in question to the Director-General of WTO.

58. Mr. DOONESEEPEE endorsed the main proposal contained in Mr. Eide's working paper on the right to food (E/CN.4/Sub.2/1999/12), namely that emphasis should henceforth be placed on economic and social rights, failing respect for which democracy would be merely a façade. As recommended by Mr. Eide, NGOs should in future pay more attention to economic and social rights and lawyers and universities could also play a positive role in the promotion of those rights. It was particularly important to broaden the training of lawyers, which was too often limited to private law, and to make them more conversant with international human rights instruments. Laws should be regarded as tools of social justice. The universities should continue the efforts that they had already made in that field.

59. It was evident that education in the field of economic and social rights played a major role insofar as it enabled Governments to understand the vast powers of transnational corporations and the adverse impact that their activities could have on the environment and the social fabric of the country in which they were operating. Accordingly, there was a need to ensure the realization of the right to education, in the same way as the right to food, as Mr. Mehedi had affirmed in his working paper on that subject (E/CN.4/Sub.2/1999/10).

60. Mr. NABI-FAI (International Islamic Federation of Student Organizations) said that the organization that he represented had great expectations of the work of the Working Group on the Right to Development, which would be meeting in September, and hoped that its discussions would focus on international responsibilities in regard to the promotion of that right because the developing countries could not fight that battle alone. The Working Group should also examine the manner in which the right to development was being applied by all States. The Sub-Commission, for its part, should take immediate action to persuade States to adopt measures to ensure the realization of that right on the threshold of the new millennium because the disparity between the richest and the poorest had reached alarming proportions during the last 30 years. In accordance with article 2 of the Declaration on the Right to Development, States should promote and protect an appropriate political, social and economic order for development. It was precisely because of the absence of those favourable conditions at the national and international levels that the international community had been unable to ensure the realization of the right to development both individually and collectively.

61. The numerous conflicts that had raged throughout the world since the end of the cold war had destroyed all hopes for a stable world economic order. However, the peace and security of individuals and society constituted the fundamental condition for respect for civil and political rights and the promotion of economic, social and cultural rights. In an atmosphere of extreme violence, the very concept of human rights became meaningless. For example, the conflict between India and Pakistan over the issue of Kashmir, which had lasted for more than 50 years, and the occupation of that territory by Indian forces had led to a denial of the economic, social and cultural rights, and particularly the right to development, of the Kashmiris.

62. Consequently, the International Islamic Federation of Student Organizations urged the international community to work towards a peaceful settlement of those disputes as an essential precondition for the protection of the human rights, including the right to development, of the populations concerned.

63. Mrs. TANGGAHMA (Survival International) denounced the violation of the right to development of the indigenous people of West Papua, which was also called Irian Jaya in Indonesia. Two weeks ago, the Indonesian Government had tabled a bill of law under which that province would be divided into three for the theoretical purpose of improving its development and increasing its people's participation in the decision-making process. However, the people had never been consulted concerning that division and, in July, had therefore organized numerous demonstrations to protest against that plan. In fact,

although the Declaration on the Right to Development stipulated that the human person was the central subject of development and that development policy should therefore make the human being the main participant in, and beneficiary of, development, a minimum of consultation on that subject was of capital importance in order to ensure true and sustainable development.

64. In actual fact, for more than 30 years, the Indonesian Government had been enriching itself through the exploitation of West Papua's vast natural resources of gas, timber, copper and gold without its inhabitants receiving anything in return. The central Government was considering the adoption of a new law under which a larger part of the profits obtained in that way would be returned to the regions concerned. However, those reinvestments would be administered by Government-appointed regional officials, such as the Governor of Irian Jaya, and not by those whose lands had been expropriated. One of the richest gold and copper mines in West Papua was being exploited by Freeport McMoran, a United States mining company, which President Habibi had recently authorized to expand its production without taking into account the devastating impact that such expansion would have on the environment and the inhabitants of the region, the Amungme tribe, who had never been consulted. The inhabitants of West Papua had not only a right to development but also a right to decide on their mode of development. In their case, it was essential that the decision-making process be effectively decentralized.

65. Survival International urged the members of the Sub-Commission to adopt a resolution on the situation in Indonesia in order to encourage the Indonesian Government to improve the human rights situation in that country, particularly in areas such as West Papua (Irian Jaya).

66. Mr. JOSHI (International Institute for Peace) said that, in the present world order, a small number of privileged States enjoyed peace and prosperity while a large number of marginalized States in the third world were plagued by warfare, civil strife, political instability, economic stagnation and ecological disasters. As trade liberalization increased, pressure was brought to bear on those States to open up their economies further to foreign investment and, in that way, their most promising economic sectors passed into the hands of transnational corporations, which entailed the disappearance of local enterprises and an increase in unemployment and poverty. The upper and middle classes who benefited from that situation were forming closer links with their counterparts in the countries of the North, thereby broadening the gap between the elite and the masses.

67. The Sub-Commission should therefore consider the various options available to developing countries to mitigate the adverse impact of globalization. First of all, the developing countries could gradually move from a direct foreign investment regime towards a multilateral investment framework in the light of the experience gained. The developing countries needed the collective will and strength to resist the pressure exercised by the industrialized countries in order to begin negotiations to that end or join OECD. The crux of the difference between existing liberal treaties and the multilateral treaties advocated by industrialized countries and TNCs lay in the issue of the treatment accorded to foreign investors in the country during the pre-establishment phase, which had vital implications for the political, social and economic objectives and interests of developing

countries. The third-world countries should also consider the extent to which adhesion to a multilateral investment framework would enable them to pursue their own policy more freely. If the developing countries chose the multilateral track, the best forum would be WTO which would enable them to negotiate a bottom-up approach, which differed from the OECD approach. Finally, in view of the heterogeneity of the developing countries, the impact and implications of a multilateral treaty would vary widely among them.

The meeting rose at 6 p.m.